

March 19, 2002

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**AWARD OF CONCESSION AGREEMENTS FOR THE OPERATION OF VENDING  
MACHINES AT COUNTY FACILITIES IN THE SOUTHERN PORTION OF THE  
COUNTY, REGIONS 1 AND 2  
(ALL) (4 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Chairman to sign the attached concession agreements with R. J. B.
2. Instruct the Auditor-Controller to receive the non-refundable cash bonus totaling \$225,000 from these two companies, and future monthly revenues and to deposit them to the General Fund.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to award a five year contract each to R. J. Bradberry for Region 1 (roughly, from the San Gabriel Mountains south to the Santa Monica and Santa Ana Freeways), and Canteen Vending Services for Region 2 (roughly, south of the Santa Monica and Santa Ana Freeways), for the operation of vending machines in the Southern portion of the County of Los Angeles.

- In order to ensure uninterrupted food service to the public and County employees working in facilities located in the Southern portion of the County, this office issued a Request For Proposals (RFP) to more than 300 potential vending machine operators and food service providers.
- In response to this solicitation, three proposals were received. Based on this

office's evaluation, it has been determined that R. J. Bradberry Co. and Canteen Vending Services, the current operators, can best address the food service needs of the County employees and the public at these various County facilities.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

The Countywide Strategic Plan directs that we effectively manage the resources we have and increase public/private partnerships (Goal 4, Strategies 1 and 3). The granting of concession agreements in County facilities to provide food service to County employees and the public is consistent with those objectives.

### **FISCAL IMPACT/FINANCING**

The County will receive cash bonuses totaling \$225,000 payable upon execution of the concession agreements. In addition, it is estimated that additional revenue in the form of commission payments will amount to approximately \$770,000 over the five-year period of the contract.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Under the terms of the attached five-year concession agreements with R. J. Bradberry Co. and Canteen Vending Services, each company shall pay the County 25 percent of the monthly gross sales, in addition to the cash bonus of \$100,000 to be paid by R. J. Bradberry Co. for Region 1 and \$125,000 to be paid by Canteen Vending Services for Region 2.

The granting of concession agreements for the operation of vending machines at various County facilities is authorized by the provisions of Government Code 25536, and is categorically exempt under the California Environmental Quality Act and the revised Environmental Document Reporting Procedures and Guidelines adopted by your Board.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

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There are no anticipated interruptions of vending machine service in any County facility.

**CONCLUSION**

Please instruct the Executive Officer, Board of Supervisors to provide a copy each of the executed agreements and a stamped, adopted Board letter to the Chief Administrative Office, Real Estate Division at 222 South Hill Street, 3rd floor, Los Angeles, CA 90012.

Respectfully submitted,

DAVID E. JANSSEN  
Chief Administrative Officer

DEJ:SNY  
CB:JDS:kh

Attachments (2)

c: County Counsel  
Auditor-Controller  
Assessor

southcovend

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CONCESSION AGREEMENT  
BETWEEN  
COUNTY OF LOS ANGELES  
AND  
R. J. BRADBERRY COMPANY

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This concession agreement, made and entered into this \_\_\_\_\_ day of  
, 2002.

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES, a  
body corporate and politic,  
hereinafter referred to as "County"**

**AND**

**R. J. BRADBERRY COMPANY**

**herein**

**"Concessionaire",**

**WITNESSETH:**

**WHEREAS**, the County owns, operates, and leases a number of public buildings within which the work of County government is performed; and

**WHEREAS**, the Board of Supervisors is authorized by the provisions of Government Code 25536 to grant concessions therein that are consistent with the government purposes served thereby; and

**WHEREAS**, a concession for the sale of food and beverage is consistent with said purposes; and

**WHEREAS**, Concessionaire is willing to exercise the grant of such a concession in accordance with the terms and conditions prescribed therefor; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1. **CONCESSION GRANTED**

1.01 Concessionaire is hereby authorized to sell food which includes sandwiches, dairy products, snack items, and beverages from vending machines. Concessionaire shall not sell cigarettes or tobacco-related products in County facilities.

1.02 The concession shall be exclusive only to the extent of authorizing vending machines to be used in the sale of the merchandise described herein in the buildings located in Region 1 shown in Exhibit A.

1.03 Concessionaire understands and agrees that the concession is by license and not lease; confers only permission to occupy and use the premises described for concession purposes in accordance with the terms and conditions hereinafter specified.

## **2. CONCESSION PREMISES**

2.01 The concession shall be conducted from the locations shown in Exhibit C and from other locations approved therefor by the Chief Administrative Office in the Southern County buildings, within which a license is hereby granted for use in the operation of vending machines thereon. County reserves the right to increase or decrease the number of vending machines in County buildings or the number of County buildings based upon health and safety reasons or the actual need for the vending machines within any public building as determined by the Chief Administrative Officer. Concessionaire shall furnish or remove vending machines as required within twenty-four (24) hours of notice thereof and assume all costs in connection therewith.

2.02 The concession premises shall be used only and exclusively for concession purposes and such other purposes as are related thereto provided express approval therefor is granted by the Chief Administrative Officer.

2.03 Concessionaire acknowledges personal inspection of the concession premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the concession. Concessionaire accepts premises in their present physical condition, and agrees to make no demands upon County for any improvements or alterations thereof.

2.04 Concessionaire shall make no alterations to the concession premises or construct any improvements thereon other than for the installation and placement of trade fixtures and personal property required for the concession granted herein. Any other improvements, additions, alterations, repairs or changes thereto shall be subject to the prior written approval thereof by the Chief Administrative Officer; securing of applicable permits therefor; and compliance with such terms and conditions relating thereto, as may be imposed thereon by the Chief Administrative Officer. All construction shall be at Concessionaire's expense.

2.05 Concessionaire hereby acknowledges the title of County, and/or any other public agencies having jurisdiction there over, in and to the concession premises and the improvements located thereon, subject, however to this agreement, and covenants and agrees never to assail, contest or resist said title.

## **3. TERM**

3.01 The term of the concession shall be for a period of five (5) years, commencing upon approval by the Board of Supervisors and terminating five (5) years thereafter, unless sooner

terminated as herein provided.

3.02 In the event Concessionaire holds over beyond the term herein provided with the consent, express or implied of County, such holding shall be from month to month only, subject to compensation provided herein.

4. **RENT AND CASH BONUS**

4.01 Concessionaire shall pay County a monthly amount equal to 25 percent (25%) of the monthly gross sales for the concession and use granted herein.

4.02 Payment shall be made by check or draft issued and payable to the Los Angeles County Auditor-Controller on or before the fifteenth (15<sup>th</sup>) day of each calendar month during the term provided herein. Payment shall be mailed or otherwise delivered to the Franchise/Concession Section, Auditor-Controller, County of Los Angeles, 500 West Temple Street, Room 514, Los Angeles, California 90012, with a copy of such check to be mailed to the Chief Administrative Office, Real Estate Division, Property Management Section, 222 South Hill Street, 3<sup>rd</sup> Floor, Los Angeles, California 90012.

4.03 In the event payment is not made or before said date, a penalty of 10 percent (10%) shall be added to the unpaid amount.

4.04 The late payment charge may be waived whenever the Chief Administrative Officer, upon appeal of the Concessionaire, finds late payment excusable by reason of extenuating circumstances.

4.05 Any late payment charge shall be due and payable within the next rental payment period. County shall not be obligated at any time to notify Concessionaire of late payment charges or the accumulation thereof.

4.06 In addition to the monthly payments required herein, Concessionaire shall pay County a non-refundable cash bonus of \$100,000.00 as consideration for the execution of this agreement by the County. Payment shall be made by check or draft to the Auditor-Controller within ten (10) working days after award of contract.

5. **ACCOUNTING RECORDS**

5.01 Concessionaire shall be required to maintain a method of accounting which shall, to the satisfaction of the Auditor-Controller, correctly and accurately reflect the gross receipts and disbursements of Concessionaire in connection with the concession. The method of accounting, including bank accounts, established for the concession shall be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the

following documents:

- a. Regular books of accounting such as general ledgers;
- b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc;
- c. State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown which shall be kept in confidence by County;
- d. Cash register tapes (daily tapes may be separated but shall be retained so that from day to day the sales can be identified);
- e. Any other accounting records that the Auditor-Controller deems necessary for proper reporting of receipts.

5.02 All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip. Said cash registers shall in all cases have locked -in sales totals and transaction counter which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

5.03 All documents, books and accounting records shall be open for inspection and reinspection at any reasonable time during the term of this agreement. In addition, the Auditor-Controller may from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by Concessionaire to the Auditor-Controller should be found to be less than the amount of gross sales disclosed by such audit and observation, Concessionaire shall pay the delinquent amount within thirty (30) days of billing therefor. If the additional amount due exceeds 2 percent (2%) of actual gross sales and there is no reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit and late charges heretofore provided for delinquent payments. All information obtained in connection with the Auditor-Controller's inspection of records or audit shall be treated as confidential information and except from public disclosure thereof. County shall not be liable or responsible for the disclosure of any such records including those marked trade secret, confidential or proprietary, if such disclosure is deemed to be required by law or an order of the Court.

5.04 Concessionaire shall furnish the Auditor-Controller with a monthly gross receipts report showing the amount payable therefrom to the County. Such report shall accompany each monthly payment required to be made as provided herein. A copy of the monthly sales report shall be mailed to Chief Administrative Office, Real Estate Division, 222 South Hill Street, 3<sup>rd</sup> Floor, Los Angeles, California 90012, Attn: Property Management Section. In addition thereto, Concessionaire shall furnish the Auditor-Controller with an annual Profit-and-Loss statement and a balance sheet prepared by a person and in form acceptable to said officer. The annual financial statements shall be submitted within sixty (60) days of the close of an agreement year. Said closing date shall be determined by reference to the date for commencement of the term herein provided.

5.05 All such accounting records, including, but not limited to all financial records, journals, vouchers, checks, state and federal income tax returns and sales tax returns, cash register tapes, proprietary data and information, shall be kept and maintained by Concessionaire and shall be made available to County during the term of this agreement and for a period of four years thereafter unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Concessionaire at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at County's option, Concessionaire shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.

## **6. OPERATING RESPONSIBILITIES**

6.01 **Compliance with Law** Concessionaire shall conform to and abide by all municipal and County ordinances, State and Federal laws and regulations, insofar as the same or any of them are applicable; and where permits or licenses are required for the concession and/or construction authorized herein, the same must be first obtained from the regulatory agency having jurisdiction thereover.

6.02 **Compliance with Rules and Regulations** Concessionaire shall conform to and abide by all rules and regulations of the Board of Supervisors and the Chief Administrative Officer insofar as the same or any of them are applicable.

6.03 **Disorderly Persons** Concessionaire agrees not to allow any loud, boisterous or disorderly persons to loiter about the concession premises.

6.04 **Illegal Act** Concessionaire shall not permit any illegal activities to be conducted upon the concession premises.

6.05 **Signs** Concessionaire shall not post signs or advertising matter upon the concession premises or improvements thereon, unless prior approval therefor is first obtained from the

Chief Administrative Officer. No handwritten signs will be allowed at any time.

6.06 **Noninterference** Concessionaire shall not interfere with the public use of the building within which vending machines are operated.

6.07 **Concession Staff** Concessionaire shall maintain an adequate and proper staff to handle the daily flow of business and shall make a reasonable effort to retain present employees. The Chief Administrative Officer may, at any time, give Concessionaire written notice to the fact that the conduct or actions of a designated employee of concessionaire is, in the reasonable belief of Chief Administrative Officer, detrimental to the interests of the public patronizing the concession premises. Concessionaire will meet with representatives of the Chief Administrative Officer to consider the appropriate course of action with respect to such matter and Concessionaire shall take reasonable measures under the circumstances to assure the Chief Administrative Officer that the conduct and activities of Concessionaire's employee will not be detrimental to the interest of the public patronizing the concession premises.

Concessionaire shall designate one member of the staff as the Concession Manager with whom County may deal on a daily basis. Any other persons selected by Concessionaire as Concession Manager shall be skilled in the management of business similar to the concessionaire and shall be subject to approval by the Chief Administrative Officer. The Concession Manager shall be fully acquainted with the concession, familiar with the terms, conditions and standards prescribed therefore by this agreement and authorized to act in the day-today operation thereof.

Concessionaire warrants that it fully complies with all statutes, requirements and laws regarding the employment eligibility of aliens and other, and that its employees performing services hereunder meet the citizenship of alien status requirements contained in federal and state status and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L.99-603). Concessionaire shall obtain from all covered employees eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Concessionaire shall retain such documentation for all covered employees for the period prescribed by law. Concessionaire shall indemnify, defend, and hold harmless the County, its officers and employees from employer sanctions and any other liability which may be assessed against Concessionaire or County, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this agreement.

All persons employed by Concessionaire under this agreement shall be competent, trustworthy, properly trained in food safety and sanitation procedures and well qualified for their work. Concessionaire shall submit to Chief Administrative Officer, a current list of all employees who are required to enter County facilities. The roster shall be kept current. Concessionaire and his/her employees will be required to provide picture identification for entry into any facility and to comply with all applicable regulations of the County.

Concessionaire shall file with the Chief Administrative Officer a certificate for each member of the concession staff showing that within the last two (2) years such person has been examined and has been found to be free of communicable tuberculosis. Certificate means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division 2 of the State Business and Professions Code or a notice from a public health agency or unit of the Tuberculosis Association which indicates freedoms from active tuberculosis.

**6.08 Days and Hours of Operation** Concessionaire shall keep the concession open every day of the week, Monday through Friday, inclusive. The minimum hours of operation shall be from 6:30 a.m. to 5:00 p.m. each day the concession is required to be open. In addition, thereto, Concessionaire shall keep the concession open for service to employees at such other times as may be requested by the Chief Administrative Officer.

**6.09 Menu And Price Schedules** Concessionaire's menu shall be that which Concessionaire has proposed, and County has approved, as shown in Exhibit B. During the term, Concessionaire shall make no changes to the quantity, quality, or price of any item on the approved menu without first obtaining the prior written approval of the Chief Administrative Office. Such approval shall not be unreasonably withheld.

**6.10 Menu** Concessionaire's proposed menu and all subsequent menus shall include a description of each item, including the weight of each portion and grade of government quality (if any) for its component item(s). No menu shall misrepresent quality, grade, or weight of any item. If concessionaire is unable to determine the weight of a given item, it may indicate that its weight will not be less than an amount which Concessionaire shall state. For a product which changes weight during cooking, Concessionaire shall indicate whether the weight indicated is that product's uncooked weight. If Concessionaire purchases various government grades of a given item, it shall state the lowest grade which it purchases.

**6.11 Publicly Displayed Menu** Prices for each item sold in each facility shall be conspicuously displayed to the satisfaction of the Chief Administrative Officer as to information given, design, type, size, style, color, and all other specifics. Said prices shall not exceed the approved prices for said items. If, in addition to any publicly displayed menu, Concessionaire provides individual menus for customers, or places price markers on item displays, said prices shall not exceed the approved prices for said items.

**6.12 Amendments May Be Required** The Chief Administrative Officer may re-evaluate the selection of items during the term. The Chief Administrative Officer's determination that the selection offered is inadequate (in general or at any particular location), or that any price is



excessive, or that the quality or quantity of any item is deficient, shall be conclusive. Concessionaire may meet and confer with the Chief Administrative Officer regarding such matters.

**6.13 Removal of Objectionable Goods and Services** Concessionaire shall immediately remove or withdraw from sale any goods that are recalled, contaminated or not fit for human consumption or services which may be found objectionable to employees and public welfare by the Chief Administrative Officer following receipt of written notification therefor.

**6.14 Sanitation** No offensive matter or refuse or substance containing an unlawful fire hazard or material detrimental to the public health, shall be permitted or remain on the concession premises, and Concessionaire shall prevent any accumulation thereof from occurring. Concessionaire shall, at all times, keep the concession premises sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt, flies and other insects, rodents and vermin.

The foregoing notwithstanding, County shall assist in maintaining the sanitation required herein by providing for the collection of all refuse and payment of all charges for the removal thereon.

**6.15 Security Devices** Concessionaire may provide any legal devices, installations, or equipment designed for the purpose of protecting the concession premises from theft, burglary, or vandalism, provided written approval for installation is first obtained from the Chief Administrative Officer. All purchases and installations thereof shall be at Concessionaire's expense.

**6.16 Safety** Concessionaire shall immediately correct any unsafe condition of the concession premises, as well as any unsafe practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the staff or public who is in need thereof, because of illness or injury occurring on the concession premises. Concessionaire shall cooperate fully with County in the investigation of any accidental injury or death occurring on the concession premises, including a prompt report thereof to the Chief Administrative Officer.

**6.17 Habitation** The concession premises shall not be used for human habitation.

**6.18 Prevailing Wages** To the extent that this concession involves the full-time employment by Concessionaire of employees necessary for the proper performances by Concessionaire of the obligations imposed on him by this concession agreement, Concessionaire agrees that the per diem wages paid to said personnel shall not be less than the prevailing rate of per diem wages in the locality in which this concession is located for each classification or type of employee provided at least 50 percent (50%) of the employees in the classification in the locality are covered by a collective bargaining agreements. In the event no



collective bargaining agreements exist in the locality in which this concession is located, the prevailing wage shall be determined by a survey of job positions comparable to those in the employ of the Concessionaire, which survey shall be undertaken by the Chief Administrative Officer or his designee. As used in this paragraph, the term locality shall be deemed to mean the greater Los Angeles area. As used in this paragraph, the term per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, paid holidays and similar purposed, Concessionaire shall keep an accurate record showing the per diem wage to each classification of employee personnel on the premises and said records shall be open to inspection at all reasonable hours by agents of the County.

**6.19 Vacation Benefits** Concessionaire shall provide a minimum of two weeks of paid vacation for each full-time employee. Full-time employees are those who work a minimum of 35 hours per week for 50 weeks.

## **7. MAINTENANCE AND REPAIRS**

7.01 County shall be responsible for maintaining the concession premises in good condition including electrical, lighting, plumbing, air conditioning, ventilating, and heating systems. In addition to this general requirement, County shall perform any and all repairs required for the maintenance thereon in compliance with all laws applicable thereto.

7.02 Concessionaire shall be responsible for repair of County-owned equipment and replacement of all improvements and equipment thereon damaged or destroyed by the negligent and willful acts and omissions of the employees, agents, suppliers and contractor of Concessionaire. All maintenance shall commence within ten (10) days of need therefor and diligently prosecuted to completion of same, except where the state of disrepair is such that an emergency of hazards is created thereby in which event there be an immediate correction thereof. County may cure the default of Concessionaire with respect to the maintenance obligations assumed therein, and upon performance thereof shall acquire a right or reimbursement therefrom for the actual costs of same, including, but not limited to, the cost of labor, materials and equipment furnished in the correction thereof, provided there is a prior mutual agreement between Chief Administrative Officer and Concessionaire upon the nature and scope of the work to be performed and the costs to be incurred therein.

## **8. DEMAND FOR REIMBURSEMENT**

8.01 Any demand of County for reimbursement hereunder shall be satisfied by Concessionaire through payment of the sums deposited with County as security for faithful performance, and/or prorate monthly installment payments over the remaining term of the agreement, commencing with the month next succeeding the date of completion of the maintenance performed. Any demand of Concessionaire for reimbursement hereunder shall be satisfied by County through a credit against the monthly rental obligation of Concessionaire,

commencing with the month next succeeding the date of completion of the maintenance performed and for each every other month of the remaining term of the agreement, until a total credit has been provided up to actual costs of cure or the rental reserved over said remaining term. County and Concessionaire waive all rights to payment on their respective rights to reimbursement for the actual costs of cure of the default of the other with respect to the maintenance obligations assumed.

## **9. UTILITIES**

9.01 County shall provide existing electrical outlets and water sources and pay for all necessary utilities with the exception of telephone service. Concessionaire waives any and all claims against County for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the concession premises. Concessionaire shall, at its own expense and with prior written approval by County, install electrical lines, and outlets and water supply lines, if such installation is practical and profitable for Concessionaire.

## **10. EQUIPMENT**

10.01 Concessionaire shall provide a vending machine of the type specified for each approved location within twenty-four (24) hours or sooner following designation thereof from the Chief Administrative Officer. All vending machines installed shall be new and carry the Underwriting Laboratories (UL) seal of approval and shall be installed in accordance with the standards of the National Electrical Code. All vending machines installed pursuant to this agreement shall remain the property of Concessionaire.

## **11. INSTALLATION**

11.01 All installations shall be made in a manner approved by the Chief Administrative Officer. Any legal devices, installations or equipment designed for the purpose of protecting the vending machines from theft, burglary or vandalism shall be provided by Concessionaire at the expense of same and subject to approval thereof by the Chief Administrative Officer. All installation shall be accomplished without alteration of the approved location, unless consent thereto is first obtained from the Chief Administrative Officer. County reserves the right to change or cancel a previously approved location, and Concessionaire shall either relocate or remove the affected equipment as required within twenty-four (24) hours of notice thereof from the Chief Administrative Officer. Concessionaire shall assume all costs of removal and installations. Except as heretofore provided, Concessionaire shall only remove vending machines installed pursuant to this agreement with consent of the Chief Administrative Officer. Said consent shall be granted or denied based upon whether removal is justified in view of consumer usage thereof, and the ability Concessionaire to realize a fair and reasonable return

based on the total net profit earned from all vending machines installed pursuant to this agreement. Concessionaire shall reimburse County for any and all damage to the public buildings arising out of the installation, relocation and removal of vending machines therein. Concessionaire shall be required to install bill changers in locations to be determined by the Chief administrative Officer and where there are a bank of more than four machines in one location.

## **12. MAINTENANCE**

12.01 Concessionaire shall maintain all vending machines in good mechanical and physical condition in order to insure the continuous operation thereof. Repairs or replacements shall be furnished within twenty-four (24) hours or sooner of notification. Concessionaire will provide and pay for a telephone number for service calls, and keep the Chief Administrative Officer currently informed thereof over the term of this agreement.

## **13. MERCHANDISE**

13.01 Concessionaire shall provide and maintain the necessary inventory of concession merchandise and prices as shown on attached Exhibit B offered for sale at approved locations. All food and beverages sold or kept for sale by Concessionaire shall be first-class in quality, wholesome and pure, and shall conform to the federal, state and County food laws, ordinances and regulations in all respects. No adulterated, misbranded or impure articles shall be sold or kept for sale by Concessionaire, and all merchandise kept on hand by Concessionaire shall be stored and handled with due regard for sanitation. Hot sandwiches shall not remain in any vending machine in excess of thirty-six (36) hours. All sandwiches placed in any vending equipment shall be dated at commissary as to the date and time made. Vending machines dispensed soft drinks in cups may, at the option of Concessionaire, be of either the refrigerated pre-mix or refrigerated post-mix type and shall dispense a minimum of six (6) ounces of drink per cup for hot beverages.

In all instances where ice is dispensed into drink, the cup must contain a minimum of seven (7) ounces of drink, exclusive of the ice. In each and every instance where post-mix machines are installed, Concessionaire shall, before placing a type of machine in operation, furnish a written specification issued by and signed by the supplier of any syrup proposed to be used therein, describing the supplier's recommendations for the proportion of syrup to water. Concessionaire further agrees that where substitution of the original supplier of any syrup to be used in any post-mix machine operated by the Concessionaire occurs, the Concessionaire shall furnish a written specification issued and signed by the supplier of any syrup proposed to be used therein, describing the supplier's recommendations for the proportion of syrup to water.

Concessionaire shall not set the operation of any post-mix machine or otherwise permit the operation of such post-mix machine to result in any drink which shall contain a lesser proportion of syrup to water than that specified in the syrup supplier's recommendation. Concessionaire shall from each installed soft-drink vending machine dispense flavor selections to include cold-type carbonated or noncarbonated fruit-drink types. However, flavor selections may be adjusted to suit customer demand. The Chief Administrative Officer may request Concessionaire to change the type of merchandise sold from a particular machine or machines. Upon receipt of notice requesting such change, Concessionaire shall make the change requested within twenty-four (24) hours of receipt thereof. The Chief Administrative Officer may also request Concessionaire to remove a particular type of merchandise from any or all vending machines installed under this agreement. Upon receipt of notice requesting such removal, concessionaire shall remove the objectionable items within twenty-four (24) hours of receipt thereof.

**14. COLLECTION OF MONEY**

14.01 Concessionaire shall provide for the collection of all monies deposited in the vending machines installed pursuant to this agreement. Should the Auditor-Controller or the Chief Administrative Officer desire to verify the count of all monies collected from a vending machine at the time of collection therefrom, Concessionaire shall cooperate therewith.

**15. RISK OF LOSS**

15.01 Concessionaire agrees to assume the risk of loss or damage to all vending machines installed pursuant to this agreement and the merchandise and money located therein from all caused other than the negligent acts or omissions of County employees.

**16. BONDS**

16.01 During any period of construction hereby required or otherwise authorized, Concessionaire shall provide a performance bond in an amount of not less than 100 percent (100%) of the cost for the construction to be performed as evidenced by construction contracts surety authorized to conduct business as a surety in the state of California and acceptable to the Administrative Office Risk Management. The condition of the bond shall be such that if Concessionaire shall complete the required construction specified herein in accordance with approved plans and specifications and received permanent certificate of occupancy for the building, then surety shall no longer be bound thereon. Said bond shall be maintained in full force and effect by Concessionaire for a period of twelve (12) months after said works of improvement have been acceptable by the Chief Administrative Officer.

16.02 During any period of construction hereby required or otherwise authorized, Concessionaire shall provide a payment bond in an amount of not less than 100 percent (100%) or the costs for the construction to be performed as evidenced by construction

contracts for all required work, payable to the County of Los Angeles and executed by a corporate surety authorized to conduct business as a surety in the State of California and acceptable to the Chief Administrative Officer. The payment bond shall insure to the benefit of all claimants as said term is presently defined by Section 3085 of the California Civil Code, or may hereafter be amended, so as to give such claimants a right of action to recover thereon in any suit brought to foreclose the liens provided for in this Title 15 of Part 4, of Division 3 of the California Civil Code or in a separate suit brought upon the bond. The condition of the bond shall be such that if Concessionaire shall well and truly pay, or cause to be paid, all claims for labor, materials, appliances, teams or power, or either or all, performed, furnished, or constructed in connection with said works or improvements, then surety shall no longer be bound thereon. Said bond shall be maintained in full force and effect until all claims for labor, materials, appliances, teams, or power have been paid, as evidenced by release or mechanic's liens by all claimants.

16.03 The Chief Administrative Officer may accept in lieu of bonds heretofore described, the performance and payment bonds of corporations duly authorized to issue surety bonds by the State, naming as principal a licensed contractor employed by Concessionaire to contract works of improvement on the concession premises, provided each bond is in an amount equal to the percentage herein above, provided, names County as an additional obligee, contains terms and conditions substantially similar to the requirements heretofore specified; and is satisfactory to the Chief Administrative Officer as to sufficiently and liability of sureties names thereon.

16.04 Concessionaire shall have the option to deposit with the County, cash or United States Government securities in all respects satisfactory to the Chief Administrative Officer in lieu of the surety obligations herein required. Said cash or securities shall be deemed deposited with County to secure full and satisfactory securities performance of the principal obligations heretofore described for which surety is required, and shall be released upon satisfactory performance thereof, as evidenced by certification of completion by the Chief Administrative Officer and release of mechanic's liens by all claimants. In lieu thereof, Concessionaire may deposit the required amount in a bank(s) whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Or a saving and loan whose deposits are insured under Title 4 of the National Housing Act (12 U.S.C. 1724 et seq.), provided the financial institution (s) in which the deposit is made will secure the amount of a deposit in excess of the insurable limit by its pledge of government securities and the account is made payable to County on demand and the certificate of deposit unless Concessionaire is in default of the required construction of the works of improvement and/or payment for labor, materials, appliances, teams, or power performed, furnished or contributed to the works of improvement in which event the principal and interest shall be payable on demand to County for expenditure on completion of the works of improvement and payment of any mechanic's claims and/or liens.

## 17. **HOLD HARMLESS AND INDEMNIFICATION**

17.01 Concessionaire agrees to indemnify, defend, and save harmless County, its agents, officers, and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, arising from or connected with the use of the concession premises and/or the operations or services under this agreement by concessionaire and the agents, servants and employees thereof, including but not limited to, damaged caused by negligence, creation or maintenance of a dangerous condition of property, breach of express or implied warranty of product, defectiveness of product, or intentional infliction of harm; nonpayment for labor, materials, appliances, or power, performed on, or furnished or contributed to the concession premises; infringement of a patent or copyright or disclosure of a trade secret; violation of state and federal antitrust laws; and violation of federal and state civil rights laws.

17.02 This promise of indemnity shall extent to all the covered liability, expenses, and claims notwithstanding that the act, omission, or condition giving rise thereto is proximately caused by the active or passive negligence of County relating to the use of the concession premises, operations and services, an act or omission relating to the enforcement of this agreement, or a dangerous or defective condition of the concession premises. Concessionaire's duty to indemnity County shall survive the expiration or other termination of this agreement.

## 18. **INSURANCE**

18.01 Without limiting Concessionaire's indemnification of County, Concessionaire and during the term of this agreement, the Concessionaire shall provide and maintain, and shall require all of its sub-contractors to maintain, the following programs of insurance specified in this agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County, and such coverage shall provided and maintained at Contractor's own expense.

A. **Evidence of Insurance:** Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to the Chief Administrative Office, 222 South Hill Street, 3<sup>rd</sup> Floor, Los Angeles, California 90012 prior to commencing services under this agreement. Such certificates or other evidence shall:

- (1) Specifically identify this agreement.
- (2) Clearly evidence all coverages required in this agreement.
- (3) Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
- (4) Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special

Districts, its officials, officers and employees as insureds for all activities arising from this agreement.

- (5) Identify any deductibles or self-insured retentions for County's approval. The County retains the right to require Concessionaire reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or require Concessionaire to provide a bond guaranteeing payment of all payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

- B. **Insurer Financial Ratings:** Insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating or not less than A:VII, unless otherwise approved by County.
- C. **Failure to Maintain Coverage:** Failure by Concessionaire to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of the contract upon which County may immediately terminate or suspend this agreement. County, at its sole option, may obtain damages from Contractor resulting from said breach. Alternatively, County, may purchase such required insurance coverage, and without further notice to Concessionaire, County may deduct from sums due to Concessionaire any premium costs advanced by County for such insurance.
- D. **Notification of Incidents, Claims or Suits:** Concessionaire shall report to County:
- (1) any accident or incident relating to services performed under this agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Concessionaire and/or County. Such report shall be made in writing within 24 hours of occurrence.
  - (2) any third party claim or lawsuit filed against Concessionaire arising from or related to services performed by Concessionaire under this agreement.
  - (3) any injury to a Concessionaire's employee which occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County contract manager.
  - (4) any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Concessionaire under the terms of this agreement.
- E. **Compensation for County Costs:** In the event Concessionaire fails to comply with any of the indemnification or insurance requirements of this agreement, and such failure to comply results in any costs to the County, Concessionaire shall pay full



compensation for all costs incurred by County.

F. **Insurance Coverage Requirements for Sub-contractors:** Concessionaire shall ensure any and all sub-contractors performing services under this agreement meet the insurance requirements of this agreement by either:

- (1) Concessionaire providing evidence of insurance covering the activities of sub-contractors, or
- (2) Concessionaire providing evidence submitted by sub-contractors maintain the required insurance coverage. County retains the right to obtain copies of evidence of sub-contractor insurance coverage at any time.

18.02 **Insurance Coverage Requirements:**

A. **General Liability** insurance (written on ISO policy form CG 00 01 or its equivalent) with limits or not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

B. **Automobile Liability** insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all “owned”, “hired” and “non-owned” vehicles, or coverage for “any auto”.

C. **Workers’ Compensation and Employers’ Liability:** insurance providing workers’ compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Concessionaire is responsible. If Concessionaire’s employees will be engaged in maritime employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers’ Compensation Act, Jones Act or any other federal law for which Concessionaire is responsible.

In all cases, the above insurance also shall include Employers’ Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease-policy limit	\$1 million
Disease-each employee:	\$1 million



- D. **Professional Liability:** insurance covering liability arising from any error, omission, negligent or wrongful act of the Concessionaire, its officers or employees with limits of not less than \$1 million per occurrence and \$3 million aggregate. The coverage also shall provide an extended two year reporting period commencing upon termination or cancellation of this agreement.
- E. **Property Coverage:** Such insurance shall be endorsed naming the County of Los Angeles as loss payee, provide deductibles of no greater than five percent (5%) of the property value, and shall include:
- Personal Property: Automobiles and Mobile Equipment: Special form ("all risk") coverage for the actual cash value of County-owned or leased property.
- Real Property and All Other Personal Property: Special form ("all risk") coverage for the full replacement value of County-owned or leased property.
- F. **Basic Health Insurance:** A program providing a basic health insurance program for full-time employees providing service under this agreement. Full-time employees are those who work a minimum of 35 hours a week for a period of 50 weeks.

## 19. **TAXES AND ASSESSMENTS**

19.01 The property herein shall be subject to real property taxation and assessment thereon, and in the event thereof, Concessionaire shall pay before delinquency all lawful taxes, assessments, fees or charges which, at any time, may be levied by the County, State, or City in any other tax or assessment-levying body upon the concession premises and any improvements located thereon.

19.02 Concessionaire shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment it owns or uses in the premises.

## 20. **TRANSFERS**

20.01 In entering into this agreement, County has specifically bargained for the provision of services and other consideration due it by the named Concessionaire. Accordingly, no transfer of this concession agreement, or any part thereof, is allowed. Any transfer of this agreement, whether by sale, assignment, sublease or otherwise, is absolutely

prohibited. In the event that Concessionaire attempts to make such a prohibited transfer, the attempted transfer shall be void and of no effect. Furthermore, County may, at its sole option, treat the attempted transfer as a material breach of this agreement and terminate this agreement.

20.02 A transfer under this section shall include a change in the beneficial ownership of Concessionaire (other than a transfer to a family trust) of more than 50 percent (50%).

20.03 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.

20.04 The concession shall not be transferable by testamentary disposition of the state laws of interstate succession, as the rights, privileges, and use conferred by this agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter X or XI of the Bankruptcy Act.

20.05 Shareholders or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is affected in such a way as to give majority control of Concessionaire to any persons, corporations, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this agreement, approval thereof shall be required. Consent to any such transfer shall only be refused if the Chief Administrative Officer finds that the transferee is lacking in experience or financial ability to conduct the concession.

20.06 The prohibition herein contained shall not be applicable with respect to transfers of this agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Chief Administrative Officer.

## 21. **NONDISCRIMINATION**

21.01 Concessionaire certifies and agrees that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, political affiliation, marital status, age, handicap, national origin, or sex and in compliance with all Federal and

State laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964, the Unruh Civil Rights Act, the Cartwright Act, the Americans with Disabilities Act of 1991 and the State Fair Employment Practices Act.

21.02 Concessionaire certifies and agrees that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, religion, ancestry, national origin or sex.

21.03 All employment records shall be open for inspection and reinspection at any reasonable time during the term of this agreement for the purpose of verifying the practice of non-discrimination by Concessionaire in the areas heretofore described.

21.04 The sum of TWO THOUSAND DOLLARS (\$2,000.00) is hereby agreed upon as the amount of damages that will be sustained by County for breach of the promises on nondiscrimination herein contained. Said amount has been set by the parties hereto in recognition of the difficulty in fixing actual damages arising from a breach thereof.

## 22. **CANCELLATION**

22.01 Upon the occurrence of any one or more of the events of default hereinafter described, this agreement, shall be subject to cancellation. As a condition precedent thereto, the Chief Administrative Officer shall give Concessionaire ten (10) days notice by registered or certified mail of the date set for cancellation thereof the ground therefore; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made thereafter.

22.02 Upon cancellation, County shall have the right to take possession of the concession premises, including all improvements, equipment, and inventory located thereon, and use for the purpose of satisfying or mitigating all damages arising from a breach of this agreement.

22.03 Action by County to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this agreement.

22.04 Any trustee, beneficiary, mortgage or lender under a hypothecation or mortgage previously approved by the Chief Administrative Officer shall have the right at any time during the term of this agreement to undertake any and all action that may be required in order to prevent a cancellation of this agreement and a forfeiture of the concession. Accordingly, the Chief Administrative Officer shall send a copy of any intended cancellation of this agreement to any of the aforementioned Lenders whose security would be affected thereby provided that such Lenders shall have previously registered with the Chief Administrative Officer by written

notice specifying the name and address of said Lender; and upon request thereof for postponement, extend the date set therefor by such time as the Chief Administrative Officer finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new Concessionaire under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the Chief Administrative Officer.

## **23. EVENTS OF DEFAULT**

23.01 The abandonment, vacation or discontinuance of operations on the concession premises for more than forty-eight (48) consecutive hours.

23.02 The failure of Concessionaire's to punctually to pay or make the payments required when due, where the delinquency continues beyond ten (10) days following written notice for payment thereof.

23.03 The failure of Concessionaire to operate in the manner required by this agreement, where such failure continues for more than ten (10) days after written notice from the Chief Administrative Officer to correct the condition therein specified.

23.04 The failure to maintain the concession premises and the improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary and safe satisfactory condition, where such failure continues for more than ten (10) days after written notice from the Chief Administrative Officer to begin correction of the condition.

23.05 The failure of Concessionaire to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this agreement, where such failure continues for more than thirty (30) days after written notice from the Chief Administrative Officer for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be reasonably required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time may be waived in the manner and to the extent allowed by the Chief Administrative Officer.

23.06 The filing of a voluntary petition in bankruptcy, the appointment of any receiver of Concessionaire's assets, the making of a general assignment for the benefits of creditors, a petition or answer seeking an arrangement for the reorganization of Concessionaire under any Federal Reorganization Act, including petitions or answers under Chapter XI of the Bankruptcy Act; the occurrence of any act by Concessionaire which to deprive Concessionaire permanently of rights, powers and privileges necessary for the proper conduct and operation of the concession, the levy of any attachment or execution which substantially interferes with attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

23.07 Determination by the Chief Administrative Officer, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination, or having been practiced by Concessionaire in violation of State and/or Federal laws thereon.

23.08 Transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this agreement.

24. **DESTRUCTION OF CONCESSION PREMISES**

24.01 In the event the premises shall be totally or partially destroyed by the fire, earthquake, flood, storms, war, insurrection, riot, public disorder, casualty, County shall either restore the premises or terminate this agreement.

24.02 Should County elect to restore the premises, this agreement shall continue in full force and effect except that the payments to be made by concessionaire shall be abated and/or other relief afforded to the extent that the Chief Administrative Officer may determine the construction interferes with the concession, provided a claim therefor is filed with the Chief Administrative Officer within one hundred (100) days of commencement of construction.

24.03 Concessionaire agrees to cooperate with County in the restoration of the concession premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities . Concessionaire further agrees to cooperate in the determination of the abatement and other relief to be provided by furnishings all information requested related to the concession, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

24.04 The aforesaid provisions of this section shall also be applicable to a total or partial destruction of the facilities by the aforementioned causes, except that the relief to be provided shall be based upon the extent the Chief Administrative Officer may determine that the reduction in the public's use of the due to the partial of total closure thereof has affected the concession.

24.05 Concessionaire agrees to accept the remedy heretofore provided in the event of a destruction of the premises, and hereby waives any or all additional rights and remedies for relief or compensation that are presently available or may hereinafter be made available under the laws and statutes of this state.

25. **CONSTRUCTION BY COUNTY AFFECTING CONCESSION PREMISES**

25.01 In the event County shall construct or cause to be constructed a new facility for

Concession, this agreement shall continue in full force and effect, except that the payment to be made by Concessionaire shall be abated and other relief afforded to the extent that the Chief Administrative Officer may reasonably and in good faith determine after Concessionaire has an opportunity to be heard and to present evidence the construction has in anyway interfere, or will interfere with Concessionaire's operation of its concession, and or Concessionaire's revenue from the concession provided a claim therefore is filed with the Chief Administrative Officer within one hundred (100) days of Concessionaire's commencement of construction.

25.02 Concessionaire agrees to cooperate with County in the event the construction affects the concession premises by vacating and removing therefrom at County's cost all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Concessionaire further agrees to cooperate in the determination of the abatement or other relief to be provided by furnishing all information requested relative to the concession and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

25.03 The aforementioned provisions of this section shall also be applicable in the event of performance of work on the cafeteria requires a partial or total closure thereof, except that the abatement or other relief to be provided shall be based upon the extent the Chief Administrative Officer may determine that the reduction in the public's use of the facility due to the partial or total closure thereof, has affected the concession.

25.04 Concessionaire agrees to accept the remedy heretofore provided in the event of construction upon the concession premises and hereby waives any or all additional rights and remedies for relief or compensation that are presently available or may be made available hereinafter under the laws and statutes of this state.

## 26. **WAIVER**

26.01 Any waiver by County or Concessionaire of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of County to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements or estopping County from enforcing the full provisions thereof.

26.02 No delay, failure, or omission of County to re-enter the concession premises or to exercise any rights, power, privilege or option, arising from any default, nor any subsequent acceptance of payment then or thereafter shall impair any such right, power, privilege or option, or acquiescence in such default or as a relinquishment of any right.

26.03 No notice to Concessionaire shall be required to restore or revive "time of the essence" after the waiver by County of any default.

26.04 No option, right, power, remedy or privilege of County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given County this agreement shall be cumulative.

**27. RIGHT OF ENTRY**

27.01 Any officer or employee of the County may enter upon the concession premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions thereof, or for any other purpose incidental to the rights of the County.

27.02 In the event of an abandonment, vacation or discontinuance of concession operations for a period in excess of forty-eight (48) hours, Concessionaire hereby irrevocably appoints the County as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the concession premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (3) sublease or license the premises; and (4) after payment of all expenses of such subleasing or licensing apply all payment realized therefrom to the satisfaction or mitigation of all damages arising from Concessionaire's breach of this agreement. Entry by the offices and employees of the County upon the concession premises for the purpose or exercising the authority conferred hereon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this concession agreement.

**28. SURRENDER**

28.01 Upon expiration of the term hereof, or termination thereof as herein provided, Concessionaire shall peaceably vacate the premises and any and all improvements located thereon and deliver up the same to County in a reasonably good condition, ordinary wear and tear excepted.

**29. TERMINATION FOR IMPROPER CONSIDERATION**

29.01 County may, by written notice to Concessionaire, immediately terminate the right of Concessionaire to proceed under this agreement if it is found that consideration, in any form, was offered or given by Concessionaire, either directly or through an intermediary, to any



County officer, employee or agent with the intent of securing the agreement or securing favorable treatment with respect to the award, amendment or extension of the agreement or the making of any determination with respect to the Concessionaire's performance pursuant to the agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Concessionaire as it could pursue in the event of default by the Concessionaire.

29.02 Concessionaire shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6881.

29.03 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

### 30. **LOBBYIST ORDINANCE**

30.01 Proposer and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by proposer, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of proposer or any County lobbyist or County lobbying firm retained by Proposer to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this agreement upon which County may immediately terminate or suspend this agreement.

### 31. **REFERRAL OF CURRENT AND FORMER COUNTY EMPLOYEES FOR EMPLOYMENT WITH CONCESSIONAIRE**

31.01 Concessionaire shall accept referrals from County Human Resources of qualified and current former County employees for consideration of employment with Concessionaire. Such consideration for employment shall be limited to the vacancies in Concessionaire's staff needed to perform services under this agreement. If such referrals results in offers of employment such offers shall be made once, shall be in writing, shall indicate whether the position is full-time or part-time, and shall be valid for a period of ten (10) calendar days from the date the offer is made, unless such period is extended at Concessionaire's option. Such offers shall be for vacancies which occur in this agreement. Employment offers to such employees shall be under at least the same conditions and rates of compensation which apply to the other persons who are employed or may be employed Concessionaire. Concessionaire shall maintain records of such offers to include a description of the position and duties, the rate of pay and fringe benefits, and whether the offer was accepted, rejected, or not responded to within the allocated time period. Such employees who are employed by Concessionaire under this paragraph shall not be discharged during the term of this agreement except for cause. Concessionaire shall notify in writing Resources staff and/or other County staff which may be



designated in writing by the Chief Administrative Officer.

32. **COUNTY'S QUALITY ASSURANCE PLAN**

32.01 The Chief Administrative Officer will evaluate Concessionaire's performance under this agreement on an annual basis. Such evaluation will include assessing Concessionaire's compliance with all contract terms and performance standards. Concessionaire deficiencies which County determines are severe or continuing and that may place performance of the agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and Concessionaire. If improvement does not occur consistent with the corrective action measures, County may terminate this agreement, or impose other penalties as specified in this agreement.

33. **CONCESSIONAIRE'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

33.01 Concessionaire acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through County contracts are in compliance with their court-ordered child, family, and espousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

33.02 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Concessionaire's duty under this agreement to comply with all applicable provisions of law, Concessionaire warrants that it is in compliance and shall, during the term of this agreement, maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42USC Section 653a) and California Unemployment Insurance Code Section 1088.55, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Espousal Support, pursuant to Code of Civil Procedure Section 706.31 and Family Code Section 5246(b).

33.03 Within thirty (30) calendar days of renewal or term extension amendment to this agreement of at least one year, Concessionaire shall submit to County's District Attorney (DA) a completed Principal Owner Information Form (POI Form), incorporated herein by reference, along with certifications in accordance with the provisions of section 2.200.060 of the County Code, that : (1) the POI Form has been appropriately completed and provided to the DA with respect to Concessionaire's Principal Owners; (2) Concessionaire has fully complied with all applicable State Notices of Assignment and will continue to maintain compliance. Such certification shall be submitted on the Child Support Compliance Program Certification (CSCPC Certification), also incorporated herein by reference. Failure of concessionaire to

submit the CSCPC Certification (which includes certification that the POI Form has been submitted to the DA) to County's DA shall represent a material breach of contract upon which County may immediately suspend or terminate this agreement.

34. **TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

34.01 Failure of Concessionaire to maintain compliance with the requirements set forth in Paragraph 33 (Concessionaire's Warranty of Adherence to County's Child Support Compliance Program) shall constitute a default by Concessionaire under this agreement. Without limiting the rights and remedies available to County under any other provision of this agreement, failure to cure such default within ninety (90) calendar days of written notice by County's DA shall be grounds upon which County's Board of Supervisors may terminate this agreement.

35. **CONCESSIONAIRE'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT**

35.01 Concessionaire acknowledges the County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Concessionaire understands that it is County's policy to encourage all County contractors to voluntarily post County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent

position at contractor's place of business. County's District Attorney will supply contractor with the poster to be used.

36. **INDEPENDENT CONTRACTOR**

36.01 In performing the obligations hereunder, Concessionaire is engaged solely in the capacity of independent contractor, it being expressly understood that no relationship between the contracting parties hereto other than that of independent contractor has been or is intended to be created. This concession agreement does not constitute and the parties hereto do not intend to create thereby a partnership or a joint venture, or a relationship of master and servant or principal and agent as it is mutually understood and agreed that the relationship created thereby and the construction of rights and duties thereunder is to be determined in accordance with the laws relating to owners and occupants of real property.

37. **ENFORCEMENT**

37.01 The Chief Administrative Officer shall be responsible for the enforcement of this agreement on behalf of County and shall be assisted therein by those officers and employees

of County having duties in connection with the administration thereof.

37.02 In the event County commences legal proceedings for the endorsement of this agreement or recover of the premises used herein, Concessionaire does hereby agree to pay any sum which may be awarded to County by the Court for attorney's fees and costs incurred in the action brought thereon.

### 38. **GRATUITIES**

38.01 It is improper for any County officer, employee or agent to solicit consideration, in any form, from a proposer with the implication, suggestion or statement that the proposer's provision of the consideration may secure more favorable treatment for the proposer in the award of the contract or that the proposer's failure to provide such consideration may negatively affect the County's consideration of the proposer's submission. A proposer shall not offer or give, either directly or through an intermediary, consideration, in any form, to a County officer, employee or agent for the purpose of securing treatment with respect to the award of the contract. The term proposer shall include Concessionaire.

38.02 A proposer shall immediately report any attempt by a County officer, employee or agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861. Failure to report such a solicitation may result in the proposer's submission being eliminated from consideration.

38.03 Among other items such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts..

### 39. **CONCESSIONAIRE DEBARMENT**

39.01 On January 11, 2000, the Los Angeles County Board of Supervisors adopted an ordinance for Determinations of Contractor Non-Responsibility and Contractor Debarment (Ordinance), Los Angeles County Code Chapter 2.202, which is applicable to all County contracts except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.

- A. A responsible Concessionaire is a Concessionaire who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible concessionaires.
- B. The Concessionaire is hereby notified that, in accordance with Chapter

2.202 of the County Code, if the county acquires information concerning the performance of the Concessionaire on this or other contracts which indicates that the Concessionaire is not responsible, the County, may, in addition to other remedies provided in the contract, debar the Concessionaire from bidding on County contracts for a specified period of time not to exceed 3 years, and terminate any or all existing contracts the Concessionaire may have with the County.

- C. The County may debar a Concessionaire if the Board of Supervisors finds, in its discretion, that the Concessionaire has done any of the following: (1) violated any term of a contract with the County, (2) committed any act or omission which negatively reflects on the Concessionaire's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.
- D. If there is evidence that the Concessionaire may be subject to debarment, the Department will notify the Concessionaire in writing of the evidence which is the basis for the proposed debarment and will advise the Concessionaire of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Concessionaire and/or the Concessionaire's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the Concessionaire should be debarred; and, if so, the appropriate length of time of the debarment. If the Concessionaire fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Concessionaire may be deemed to have waived all rights of appeal.

#### 40. **INTERPRETATION**

40.01 This agreement shall be interpreted according to the rules which govern the interpretation of contracts, as prescribed in Part 2 of Division 3 of the California Civil Code, commencing with Section 1635.

40.02 The headings herein contained are for convenience and reference only and are

not intended to define or limit the scope of any provisions thereof.

40.03 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

**Auditor-Controller** - The County Auditor-Controller or an authorized representative thereof.

**Beverage** - Any liquid prepared by flavoring, heating and/or admixing in advance of consumption thereof, other than alcoholic beverages as defined in the State Alcoholic Beverages Control Act.

**Chief Administrative Officer** - The Chief Administrative Officer of the County of Los Angeles or an authorized representative thereof.

**Gross Receipts** - All money, cash, receipts, assets, property or other things of value, including, but not limited to, gross charges, sales, rental, fees and commissions made or earned by Concessionaire, and/or assignees, subleases, or permittees thereof, whether performed in whole or in part, on the concession premises, including, but not limited to, rental, the rendering or supplying or services and the sale of goods, wares or merchandise. Gross receipts shall not include the following:

- a. Sales and excise taxes applicable thereto, required to be collected by Concessionaire and/or permittees thereof.
- b. Federal, state, municipal or other taxes collected from the consumers, regardless or whether the amount thereof as stated to the consumer as a separate charge, provided the amount of such taxes shall be shown on the accounting records for the concession as hereinafter required.
- c. Receipts from the sale or trade-in value of any equipment used on the concession premises and owned by Concessionaire.
- d. Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to the shippers, suppliers or manufactures.
- e. Receipts with respect to any sale where the subject of such sale or some part thereof, is thereafter returned by the purchaser and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in

the form of cash or credit.

**Net Profit** - Net profit shall be computed by debiting from gross receipts all expenses paid by Concessionaire which are directly related to the vending machine operation for said contract year. These expenses consist of salaries and benefits for employees, including an on-site manager, performing services and labor on the premises, food costs, costs of expendable items such as eating and cooking utensils, costs of utilities, waste disposal, maintenance and repair costs, depreciation on equipment owned by Concessionaire (useful life shall be the period of this contract) and the costs of insurance, taxes, licenses and fees prorated on the basis of a contract year. Said direct expenses shall not include administrative expenses, such as management salaries, accounting, auditing, clerical and other services generally classified as overhead. In the event there is any conflict or disagreement as to what constitutes a direct expense, the opinion of the County's Auditor-Controller shall be decisive in the matter.

**County** - Shall mean the County of Los Angeles.

**State** - The State of California.

**"Region 1"**: That area located north and northwest of the Santa Monica Freeway (10), (but not beyond the San Fernando Valley) and north and northeast of the Santa Ana Freeway (5), except buildings or areas therein designated for use by persons other than Concessionaire in connection with the grant of a concession for airports; employee cafeterias or park purposes, beaches and harbors areas, or in connection with the Business Enterprise Program for the Blind, State of California, Department of Rehabilitation, where the term provided therefor is concurrent in whole or in part with the term of this agreement. Also excepting there from those facilities that are part of the Los Angeles County University of Southern California Medical Center Complex, and Sheriff's inmate areas, but not Sheriff stations and offices.

**Vending Machines** - Equipment that dispenses merchandise upon insertion of coins or use of debit cards, as well as equipment such as coffee brewers, furnished without charge for use in offices on condition that ingredients, accessories and supplies required in the preparation of hot beverages with sale equipment shall be purchase exclusively from Concessionaire and that payment therefor shall be made by the consumers thereof without any derivative liability for said debts on the part of employers.

#### 41. **NOTICES**

41.01 Any notices required to be given under the terms of this concession agreement or any law applicable thereto may be placed in a sealed envelope, with posted paid, addressed to the person on whom it is to be served, and deposited in a post office mail box, sub-post office, substation or mail chute, or other like facility regularly maintained by the United State Postal

Service. The address to be used for any notice served by mail upon Concessionaire shall be:

Mr. Scott Bradberry, Vice President  
R. J. Bradberry Company  
1537 E. Adams Boulevard  
Los Angeles, CA 90011  
Phone: (323) 232-2451

or such other place as any hereinafter be designed in writing to the Chief Administrative Officer by Concessionaire. Any notice served by mail upon County shall be addressed to:

Chief Administrative Office, Real Estate Division  
222 South Hill Street, 3<sup>rd</sup> Floor  
Los Angeles, CA 90012

or such other place as may hereinafter be designated in writing to Concessionaire by the Chief Administrative Officer. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

42. **ENTIRE AGREEMENT**

42.01 This document and the exhibits attached hereto constitute the entire agreement between County and Concessionaire for the vending machine concession in Region 1. All other agreements, promises and representations with respect thereto, other than those contained herein are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises and covenants relating to the concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this agreement shall not render the other provisions thereof unenforceable, invalid or illegal.

42.02 This document may be modified only upon written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of County until approved by the Chief Administrative Officer.

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**IN WITNESS WHEREOF**, Concessionaire has executed this agreement or caused it to be fully executed and County of Los Angeles, by order of its Board of Supervisors, has caused this agreement to be executed on its behalf by the Mayor of said Board and attested by the Executive Officer, Board of Supervisors thereof, the day and year first above written.

**COUNTY OF LOS ANGELES**

BY

Chairman, County of Los Angeles

ATTEST:

VIOLET VARONA-LUKENS

Executive Officer, Board of Supervisors By \_\_\_\_\_

**R.J. BRADBERRY COMPANY**

By \_\_\_\_\_  
Deputy

By

APPROVED AS TO FORM

LLOYD W. PELLMAN

County Counsel

BY

Deputy

CB:JDS:kb

RJBradberryvendmachines100201



## LIST OF VENDING MACHINES IN REGION 1

DEPARTMENT/ADDRESS	VENDING MACHINES
1. Chief Administrative Office 222 S. Hill Street Los Angeles	1 snack 1 hot beverage
2. County Archives 222 N. Hill Street Los Angeles	1 snack 1 soda
3. Criminal Courts 210 W. Temple Street Los Angeles	1 soda 1 snack 1 soda 1 snack
4. DPSS-Gain Headquarters 3220 Rosemead Blvd. El Monte	1 soda 1 snack
5. Burbank Courthouse 300 E. Olive Avenue Burbank	1 soda 1 snack 1 snack 1 soda
6. Public Social Services 2601 Wilshire Boulevard Los Angeles	1 soda
7. Glendale Courthouse 600 E. Broadway Street Glendale	1 hot beverage 1 soda 1 soda 1 snack 1 snack
8. Superior Court 111 N Hill Street Los Angeles	1 soda 1 snack 1 candy



**DEPARTMENT/ADDRESS****VENDING MACHINES**

- |     |   |  |
|-----|---|--|
| 9.  | Hollywood Courthouse<br>5925 Hollywood Blvd.<br>Los Angeles           | 1 soda<br>1 snack<br>1 hot beverage                                      |
| 10. | Pasadena Courthouse<br>200 N. Garfield Avenue<br>Pasadena             | 1 soda<br>1 snack<br>1 soda<br>1 snack                                   |
| 11. | Santa Anita Courthouse<br>300 W. Maple Street<br>Monrovia             | 1 soda<br>1 snack  |
| 12. | San Fernando Courthouse<br>1150 N. San Fernando Street<br>Los Angeles | 1 soda<br>1 snack  |
| 13. | West Los Angeles Courthouse<br>1633 Perdue Street<br>West Los Angeles | 1 soda<br>1 snack<br>1 hot beverage                                      |
| 14. | Community Services<br>3175 W. 6 <sup>th</sup> Street<br>Los Angeles   | 1 soda<br>1 snack<br>1 hot beverage                                      |
| 15. | Public Social Services<br>4680 San Fernando Road<br>Glendale          | 1 soda<br>1 snack<br>1 candy   |
| 16. | Public Social Services<br>5026 Santa Monica Blvd.<br>Los Angeles      | 1 soda<br>1 candy  |
| 17. | Public Social Services<br>5445 E. Whittier Street<br>Los Angeles      | 1 soda<br>1 snack  |
| 18. | El Monte Health Center<br>10953 Ramona Blvd.<br>El Monte              | 1 snack<br>1 snack<br>1 hot beverage<br>1 food machine<br>1 canned juice |



**DEPARTMENT/ADDRESS****VENDING MACHINES**

- |     |   |  |
|-----|---|--|
| 19. | Mental Health<br>3160 W. 6 <sup>th</sup> Street<br>Los Angeles        | 1 soda<br>1 snack  |
| 20. | West Valley Mental Health<br>7621 Canoga Avenue<br>Canoga Park        | 1 soda   |
| 21. | McLaren Hall<br>4024 N. Durfee Avenue<br>El Monte                     | 1 soda<br>1 snack  |
| 22. | Registrar-Recorder<br>12400 W. Imperial Highway<br>Norwalk            | 1 soda -2 <sup>nd</sup> floor<br>1 soda -4 <sup>th</sup> floor<br>1 snack-4th floor<br>1 soda-6th floor<br>1 soda-7th floor<br>1 snack-7th floor<br>1 snack-1st floor<br>1 soda- 1 <sup>st</sup> floor |
| 23. | Hall of Administration<br>500 W. Temple Street<br>Los Angeles         | 1 soda-4th floor<br>1 snack-1st floor<br>1 soda-4th floor<br>1 snack-2nd floor<br>1 soda-2nd floor<br>1 soda-1st floor   |
| 24. | Hall of Records<br>227 N. Broadway Street<br>Los Angeles              | 1 soda<br>1 snack  |
| 25. | ISD-Purchasing Services<br>1100 N. Eastern Avenue<br>City of Commerce | 1 soda<br>1 snack<br>1 soda  |
| 26. | Mental Health, Lead Program<br>510 S. Vermont Avenue<br>Los Angeles   | 1 soda<br>1 snack  |

**DEPARTMENT/ADDRESS****VENDING MACHINES**

- |     |   |  |
|-----|---|--|
| 27. | Childrens' Services<br>1373 Center Court Drive<br>Covina                      | 1 soda<br>1 snack                      |
| 28. | Childrens' Services<br>800 S. Barranca Avenue<br>Covina                       | 1 soda<br>1 snack                      |
| 29. | Public Social Services Hqtrs.<br>12860 Crossroads Parkway<br>City of Industry | 1 soda<br>1 snack                      |
| 30. | Public Social Services<br>12900 Crossroads Parkway<br>City of Industry        | 1 soda<br>1 snack<br>1 soda<br>1 snack |
| 31. | Arraignment Court<br>429 N. Bauchet Street<br>Los Angeles                     | 1 soda<br>1 snack                      |
| 32. | Health Services<br>241 N. Figueroa Avenue<br>Los Angeles                      | 1 soda<br>1 snack<br>1 hot beverage    |
| 33. | Childrens' Services<br>10355 Slugher Avenue<br>Santa Fe Springs               | 1 soda<br>1 snack                      |
| 34. | District Attorney's Office<br>15531 Ventura Blvd.<br>Encino                   | 1 soda<br>1 snack                      |
| 35. | Alcohol & Drug Administration<br>714 W. Olympic Blvd.<br>Los Angeles          | 1 soda<br>1 snack                      |
| 36. | Beverly Hills Municipal Court<br>9355 Burton Way<br>Beverly Hills             | 1 soda<br>1 snack<br>1 hot beverage    |

**DEPARTMENT/ADDRESS****VENDING MACHINES**

37. Public Socia Services  
101 Centre Plaza Drive  
Monterey Park

1 soda  
1 snack

**Total**

**103 vending machines**

CONCESSION AGREEMENT  
BETWEEN  
COUNTY OF LOS ANGELES  
AND  
COMPASS GROUP, NORTH-AMERICAN DIVISION  
DBA: CANTEEN VENDING SERVICES



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This concession agreement, made and entered into this \_\_\_\_\_ day of  
, 2002.

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES, a  
body corporate and politic, hereinafter  
referred to as "County"**

**AND**

**COMPASS GROUP, NORTH-AMERICAN  
DIVISION, DBA:  
CANTEEN VENDING SERVICES**

**hereinafter referred to as  
"Concessionaire",**

**WITNESSETH:**

**WHEREAS**, the County owns, operates, and leases a number of public buildings within which the work of County government is performed; and

**WHEREAS**, the Board of Supervisors is authorized by the provisions of Government Code 25536 to grant concessions therein that are consistent with the government purposes served thereby; and

**WHEREAS**, a concession for the sale of food and beverage is consistent with said purposes; and

**WHEREAS**, Concessionaire is willing to exercise the grant of such a concession in accordance with the terms and conditions prescribed therefor; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1. **CONCESSION GRANTED**

1.01 Concessionaire is hereby authorized to sell food which includes sandwiches, dairy products, snack items, and beverages from vending machines. Concessionaire shall not sell cigarettes or tobacco-related products in County facilities.

1.02 The concession shall be exclusive only to the extent of authorizing vending machines to be used in the sale of the merchandise described herein in the buildings located in Region 2 shown in Exhibit A.

1.03 Concessionaire understands and agrees that the concession is by license and not lease; confers only permission to occupy and use the premises described for concession purposes in accordance with the terms and conditions hereinafter specified.

## 2. **CONCESSION PREMISES**

2.01 The concession shall be conducted from the locations shown on Exhibit C and from other locations approved therefor by the Chief Administrative Office in the Southern County buildings, within which a license is hereby granted for use in the operation of vending machines thereon. County reserves the right to increase or decrease the number of vending machines in County buildings or the number of County buildings based upon health and safety reasons or the actual need for the vending machines within any public building as determined by the Chief Administrative Officer. Concessionaire shall furnish or remove vending machines as required within twenty-four (24) hours of notice thereof and assume all costs in connection therewith.

2.02 The concession premises shall be used only and exclusively for concession purposes and such other purposes as are related thereto provided express approval therefor is granted by the Chief Administrative Officer.

2.03 Concessionaire acknowledges personal inspection of the concession premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the concession. Concessionaire accepts premises in their present physical condition, and agrees to make no demands upon County for any improvements or alterations thereof.

2.04 Concessionaire shall make no alterations to the concession premises or construct any improvements thereon other than for the installation and placement of trade fixtures and personal property required for the concession granted herein. Any other improvements, additions, alterations, repairs or changes thereto shall be subject to the prior written approval thereof by the Chief Administrative Officer; securing of applicable permits therefor; and compliance with such terms and conditions relating thereto, as may be imposed thereon by the Chief Administrative Officer. All construction shall be at Concessionaire's expense.

2.05 Concessionaire hereby acknowledges the title of County, and/or any other public agencies having jurisdiction there over, in and to the concession premises and the improvements located thereon, subject, however to this agreement, and covenants and agrees never to assail, contest or resist said title.

## 3. **TERM**

3.01 The term of the concession shall be for a period of five (5) years, commencing upon approval by the Board of Supervisors and terminating five (5) years thereafter, unless sooner terminated as herein provided.

3.02 In the event Concessionaire holds over beyond the term herein provided with the consent, express or implied of County, such holding shall be from month to month only, subject to compensation provided herein.

#### 4. **RENT AND CASH BONUS**

4.01 Concessionaire shall pay County a monthly amount equal to 25 percent (25%) of the monthly gross sales for the concession and use granted herein.

4.02 Payment shall be made by check or draft issued and payable to the Los Angeles County Auditor-Controller on or before the fifteenth (15<sup>th</sup>) day of each calendar month during the term provided herein. Payment shall be mailed or otherwise delivered to the Franchise/Concession Section, Auditor-Controller, County of Los Angeles, 500 West Temple Street, Room 514, Los Angeles, California 90012, with a copy of such check to be mailed to the Chief Administrative Office, Real Estate Division, Property Management Section, 222 South Hill Street, 3<sup>rd</sup> Floor, Los Angeles, California 90012.

4.03 In the event payment is not made on or before said date, a penalty of 10 percent (10%) shall be added to the unpaid amount.

4.04 The late payment charge may be waived whenever the Chief Administrative Officer, upon appeal of the Concessionaire, finds late payment excusable by reason of extenuating circumstances.

4.05 Any late payment charge shall be due and payable within the next rental payment period. County shall not be obligated at any time to notify Concessionaire of late payment charges or the accumulation thereof.

4.06 In addition to the monthly payments required herein, Concessionaire shall pay County a non-refundable cash bonus of \$125,000.00 as consideration for the execution of this agreement by the County. Payment shall be made by check or draft to the Auditor-Controller within ten (10) working days after award of contract.

#### 5. **ACCOUNTING RECORDS**

5.01 Concessionaire shall be required to maintain a method of accounting which shall, to the satisfaction of the Auditor-Controller, correctly and accurately reflect the gross receipts and disbursements of Concessionaire in connection with the concession. The method of

accounting, including bank accounts, established for the concession shall be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

- a. Regular books of accounting such as general ledgers;
- b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc;
- c. State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown which shall be kept in confidence by County;
- d. Cash register tapes (daily tapes may be separated but shall be retained so that from day to day the sales can be identified);
- e. Any other accounting records that the Auditor-Controller deems necessary for proper reporting of receipts.

5.02 All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip. Said cash registers shall in all cases have locked -in sales totals and transaction counter which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

5.03 All documents, books and accounting records shall be open for inspection and reinspection at any reasonable time during the term of this agreement. In addition, the Auditor-Controller may from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by Concessionaire to the Auditor-Controller should be found to be less than the amount of gross sales disclosed by such audit and observation, Concessionaire shall pay the delinquent amount within thirty (30) days of billing therefor. If the additional amount due exceeds 2 percent (2%) of actual gross sales and there is no reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit and late charges heretofore provided for delinquent payments. All information obtained in connection with the Auditor-Controller's inspection of records or audit shall be treated as confidential information and except from public disclosure thereof. County shall not be liable or responsible for the disclosure of any such records including those marked trade secret, confidential or proprietary, if such disclosure is deemed to be required by law or an order of the Court.

5.04 Concessionaire shall furnish the Auditor-Controller with a monthly gross receipts report showing the amount payable therefrom to the County. Such report shall accompany each monthly payment required to be made as provided herein. A copy of the monthly sales report shall be mailed to Chief Administrative Office, Real Estate Division, 222 South Hill Street, 3<sup>rd</sup> Floor, Los Angeles, California 90012, Attn: Property Management Section. In addition thereto, Concessionaire shall furnish the Auditor-Controller with an annual Profit-and-Loss statement and a balance sheet prepared by a person and in form acceptable to said officer. The annual financial statements shall be submitted within sixty (60) days of the close of an agreement year. Said closing date shall be determined by reference to the date for commencement of the term herein provided.

5.05 All such accounting records, including, but not limited to all financial records, journals, vouchers, checks, state and federal income tax returns and sales tax returns, cash register tapes, proprietary data and information, shall be kept and maintained by Concessionaire and shall be made available to County during the term of this agreement and for a period of four years thereafter unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Concessionaire at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at County's option, Concessionaire shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.

## 6. **OPERATING RESPONSIBILITIES**

6.01 **Compliance with Law** Concessionaire shall conform to and abide by all municipal and County ordinances, State and Federal laws and regulations, insofar as the same or any of them are applicable; and where permits or licenses are required for the concession and/or construction authorized herein, the same must be first obtained from the regulatory agency having jurisdiction thereover.

6.02 **Compliance with Rules and Regulations** Concessionaire shall conform to and abide by all rules and regulations of the Board of Supervisors and the Chief Administrative Officer insofar as the same or any of them are applicable.

6.03 **Disorderly Persons** Concessionaire agrees not to allow any loud, boisterous or disorderly persons to loiter about the concession premises.

6.04 **Illegal Act** Concessionaire shall not permit any illegal activities to be conducted upon the concession premises.

6.05 **Signs** Concessionaire shall not post signs or advertising matter upon the concession premises or improvements thereon, unless prior approval therefor is first obtained from the Chief Administrative Officer. No handwritten signs will be allowed at any time.

6.06 **Noninterference** Concessionaire shall not interfere with the public use of the building within which vending machines are operated.

6.07 **Concession Staff** Concessionaire shall maintain an adequate and proper staff to handle the daily flow of business and shall make a reasonable effort to retain present employees. The Chief Administrative Officer may, at any time, give Concessionaire written notice to the fact that the conduct or actions of a designated employee of concessionaire is, in the reasonable belief of Chief Administrative Officer, detrimental to the interests of the public patronizing the concession premises. Concessionaire will meet with representatives of the Chief Administrative Officer to consider the appropriate course of action with respect to such matter and Concessionaire shall take reasonable measures under the circumstances to assure the Chief Administrative Officer that the conduct and activities of Concessionaire's employee will not be detrimental to the interest of the public patronizing the concession premises.

Concessionaire shall designate one member of the staff as the Concession Manager with whom County may deal on a daily basis. Any other persons selected by Concessionaire as Concession Manager shall be skilled in the management of business similar to the concessionaire and shall be subject to approval by the Chief Administrative Officer. The Concession Manager shall be fully acquainted with the concession, familiar with the terms, conditions and standards prescribed therefore by this agreement and authorized to act in the day-to-day operation thereof.

Concessionaire warrants that it fully complies with all statutes, requirements and laws regarding the employment eligibility of aliens and other, and that its employees performing services hereunder meet the citizenship of alien status requirements contained in federal and state status and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L.99-603). Concessionaire shall obtain from all covered employees eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Concessionaire shall retain such documentation for all covered employees for the period prescribed by law. Concessionaire shall indemnify, defend, and hold harmless the County, its officers and employees from employer sanctions and any other liability which may be assessed against Concessionaire or County, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this agreement.

All persons employed by Concessionaire under this agreement shall be competent, trustworthy, properly trained in food safety and sanitation procedures and well qualified for their work. Concessionaire shall submit to Chief Administrative Officer, a current list of all employees who are required to enter County facilities. The roster shall be kept



current. Concessionaire and his/her employees will be required to provide picture identification for entry into any facility and to comply with all applicable regulations of the County.

Concessionaire shall file with the Chief Administrative Officer a certificate for each member of the concession staff showing that within the last two (2) years such person has been examined and has been found to be free of communicable tuberculosis. Certificate means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division 2 of the State Business and Professions Code or a notice from a public health agency or unit of the Tuberculosis Association which indicates freedoms from active tuberculosis.

**6.08 Days and Hours of Operation** Concessionaire shall keep the concession open every day of the week, Monday through Friday, inclusive. The minimum hours of operation shall be from 6:30 a.m. to 5:00 p.m. each day the concession is required to be open. In addition, thereto, Concessionaire shall keep the concession open for service to employees at such other times as may be requested by the Chief Administrative Officer.

**6.09 Menu And Price Schedules** Concessionaire's menu shall be that which Concessionaire has proposed, as shown in Exhibit B, and County has approved, as shown in Exhibit "B". During the term, Concessionaire shall make no changes to the quantity, quality, or price of any item on the approved menu without first obtaining the prior written approval of the Chief Administrative Office. Such approval shall not be unreasonably withheld.

**6.10 Menu** Concessionaire's proposed menu and all subsequent menus shall include a description of each item, including the weight of each portion and grade of government quality (if any) for its component item(s). No menu shall misrepresent quality, grade, or weight of any item. If concessionaire is unable to determine the weight of a given item, it may indicate that its weight will not be less than an amount which Concessionaire shall state. For a product which changes weight during cooking, Concessionaire shall indicate whether the weight indicated is that product's uncooked weight. If Concessionaire purchases various government grades of a given item, it shall state the lowest grade which it purchases.

**6.11 Publicly Displayed Menu** Prices for each item sold in each facility shall be conspicuously displayed to the satisfaction of the Chief Administrative Officer as to information given, design, type, size, style, color, and all other specifics. Said prices shall not exceed the approved prices for said items. If, in addition to any publicly displayed menu, Concessionaire provides individual menus for customers, or places price markers on item displays, said prices shall not exceed the approved prices for said items.

**6.12 Amendments May Be Required** The Chief Administrative Officer may re-evaluate the selection of items during the term. The Chief Administrative Officer's determination that the selection offered is inadequate (in general or at any particular location), or that any price is excessive, or that the quality or quantity of any item is deficient, shall be conclusive. Concessionaire may meet and confer with the Chief Administrative Officer regarding such matters.

**6.13 Removal of Objectionable Goods and Services** Concessionaire shall immediately remove or withdraw from sale any goods that are recalled, contaminated or not fit for human consumption or services which may be found objectionable to employees and public welfare by the Chief Administrative Officer following receipt of written notification therefor.

**6.14 Sanitation** No offensive matter or refuse or substance containing an unlawful fire hazard or material detrimental to the public health, shall be permitted or remain on the concession premises, and Concessionaire shall prevent any accumulation thereof from occurring. Concessionaire shall, at all times, keep the concession premises sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt, flies and other insects, rodents and vermin.

The foregoing notwithstanding, County shall assist in maintaining the sanitation required herein by providing for the collection of all refuse and payment of all charges for the removal thereon.

**6.15 Security Devices** Concessionaire may provide any legal devices, installations, or equipment designed for the purpose of protecting the concession premises from theft, burglary, or vandalism, provided written approval for installation is first obtained from the Chief Administrative Officer. All purchases and installations thereof shall be at Concessionaire's expense.

**6.16 Safety** Concessionaire shall immediately correct any unsafe condition of the concession premises, as well as any unsafe practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the staff or public who is in need thereof, because of illness or injury occurring on the concession premises. Concessionaire shall cooperate fully with County in the investigation of any accidental injury or death occurring on the concession premises, including a prompt report thereof to the Chief Administrative Officer.

**6.17 Habitation** The concession premises shall not be used for human habitation.

**6.18 Prevailing Wages** To the extent that this concession involves the full-time employment by Concessionaire of employees necessary for the proper performances by Concessionaire of the obligations imposed on him by this concession agreement, Concessionaire agrees that the per diem wages paid to said personnel shall not be less than

the prevailing rate of per diem wages in the locality in which this concession is located for each classification or type of employee provided at least 50 percent (50%) of the employees in the classification in the locality are covered by a collective bargaining agreements. In the event no collective bargaining agreements exist in the locality in which this concession is located, the prevailing wage shall be determined by a survey of job positions comparable to those in the employ of the Concessionaire, which survey shall be undertaken by the Chief Administrative Officer or his designee. As used in this paragraph, the term locality shall be deemed to mean the greater Los Angeles area. As used in this paragraph, the term per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, paid holidays and similar purposed, Concessionaire shall keep an accurate record showing the per diem wage to each classification of employee personnel on the premises and said records shall be open to inspection at all reasonable hours by agents of the County.

**6.19 Vacation Benefits** Concessionaire shall provide up to three weeks of paid vacation for each full-time employee. Full-time employees are those who work a minimum of 35 hours per week for 50 weeks.

## **7. MAINTENANCE AND REPAIRS**

**7.01** County shall be responsible for maintaining the concession premises in good condition including electrical, lighting, plumbing, air conditioning, ventilating, and heating systems. In addition to this general requirement, County shall perform any and all repairs required for the maintenance thereon in compliance with all laws applicable thereto.

**7.02** Concessionaire shall be responsible for repair of County-owned equipment and replacement of all improvements and equipment thereon damaged or destroyed by the negligent and willful acts and omissions of the employees, agents, suppliers and contractor of Concessionaire. All maintenance shall commence within ten (10) days of need therefor and diligently prosecuted to completion of same, except where the state of disrepair is such that an emergency of hazards is created thereby in which event there be an immediate correction thereof. County may cure the default of Concessionaire with respect to the maintenance obligations assumed therein, and upon performance thereof shall acquire a right or reimbursement therefrom for the actual costs of same, including, but not limited to, the cost of labor, materials and equipment furnished in the correction thereof, provided there is a prior mutual agreement between Chief Administrative Officer and Concessionaire upon the nature and scope of the work to be performed and the costs to be incurred therein.

## **8. DEMAND FOR REIMBURSEMENT**

**8.01** Any demand of County for reimbursement hereunder shall be satisfied by Concessionaire through payment of the sums deposited with County as security for faithful performance, and/or prorate monthly installment payments over the remaining term of the agreement, commencing with the month next succeeding the date of completion of the

maintenance performed. Any demand of Concessionaire for reimbursement hereunder shall be satisfied by County through a credit against the monthly rental obligation of Concessionaire, commencing with the month next succeeding the date of completion of the maintenance performed and for each every other month of the remaining term of the agreement, until a total credit has been provided up to actual costs of cure or the rental reserved over said remaining term. County and Concessionaire waive all rights to payment on their respective rights to reimbursement for the actual costs of cure of the default of the other with respect to the maintenance obligations assumed.

## 9. **UTILITIES**

9.01 County shall provide existing electrical outlets and water sources and pay for all necessary utilities with the exception of telephone service. Concessionaire waives any and all claims against County for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the concession premises. Concessionaire shall, at its own expense and with prior written approval by County, install electrical lines, and outlets and water supply lines, if such installation is practical and profitable for Concessionaire.

## 10. **EQUIPMENT**

10.01 Concessionaire shall provide a vending machine of the type specified for each approved location within twenty-four (24) hours or sooner following designation thereof from the Chief Administrative Officer. All vending machines installed shall be new and carry the Underwriting Laboratories (UL) seal of approval and shall be installed in accordance with the standards of the National Electrical Code. All vending machines installed pursuant to this agreement shall remain the property of Concessionaire.

## 11. **INSTALLATION**

11.01 All installations shall be made in a manner approved by the Chief Administrative Officer. Any legal devices, installations or equipment designed for the purpose of protecting the vending machines from theft, burglary or vandalism shall be provided by Concessionaire at the expense of same and subject to approval thereof by the Chief Administrative Officer. All installation shall be accomplished without alteration of the approved location, unless consent thereto is first obtained from the Chief Administrative Officer. County reserves the right to change or cancel a previously approved location, and Concessionaire shall either relocate or remove the affected equipment as required within twenty-four (24) hours of notice thereof from the Chief Administrative Officer. Concessionaire shall assume all costs of removal and installations. Except as heretofore provided, Concessionaire shall only remove vending

machines installed pursuant to this agreement with consent of the Chief Administrative Officer. Said consent shall be granted or denied based upon whether removal is justified in view of consumer usage thereof, and the ability Concessionaire to realize a fair and reasonable return based on the total net profit earned from all vending machines installed pursuant to this agreement. Concessionaire shall reimburse County for any and all damage to the public buildings arising out of the installation, relocation and removal of vending machines therein. Concessionaire shall be required to install bill changers in locations to be determined by the Chief administrative Officer and where there are a bank of more than four machines in one location.

12. **MAINTENANCE**

12.01 Concessionaire shall maintain all vending machines in good mechanical and physical condition in order to insure the continuous operation thereof. Repairs or replacements shall be furnished within twenty-four (24) hours or sooner of notification. Concessionaire will provide and pay for a telephone number for service calls, and keep the Chief Administrative Officer currently informed thereof over the term of this agreement.

13. **MERCHANDISE**

13.01 Concessionaire shall provide and maintain the necessary inventory of concession merchandise and prices as shown on attached Exhibit B offered for sale at approved locations. All food and beverages sold or kept for sale by Concessionaire shall be first-class in quality, wholesome and pure, and shall conform to the federal, state and County food laws, ordinances and regulations in all respects. No adulterated, misbranded or impure articles shall be sold or kept for sale by Concessionaire, and all merchandise kept on hand by Concessionaire shall be stored and handled with due regard for sanitation. Hot sandwiches shall not remain in any vending machine in excess of thirty-six (36) hours. All sandwiches placed in any vending equipment shall be dated at commissary as to the date and time made. Vending machines dispensed soft drinks in cups may, at the option of Concessionaire, be of either the refrigerated pre-mix or refrigerated post-mix type and shall dispense a minimum of six (6) ounces of drink per cup for hot beverages.

In all instances where ice is dispensed into drink, the cup must contain a minimum of seven (7) ounces of drink, exclusive of the ice. In each and every instance where post-mix machines are installed, Concessionaire shall, before placing a type of machine in operation, furnish a written specification issued by and signed by the supplier of any syrup proposed to be used therein, describing the supplier's recommendations for the proportion of syrup to water. Concessionaire further agrees that where substitution of the original supplier of any syrup to be used in any post-mix machine operated by the Concessionaire occurs, the Concessionaire shall furnish a written specification issued and signed by the supplier of any syrup proposed to be used therein, describing the supplier's recommendations for the proportion of syrup to water.

Concessionaire shall not set the operation of any post-mix machine or otherwise permit the operation of such post-mix machine to result in any drink which shall contain a lesser proportion of syrup to water than that specified in the syrup supplier's recommendation. Concessionaire shall from each installed soft-drink vending machine dispense flavor selections to include cold-type carbonated or noncarbonated fruit-drink types. However, flavor selections may be adjusted to suit customer demand. The Chief Administrative Officer may request Concessionaire to change the type of merchandise sold from a particular machine or machines. Upon receipt of notice requesting such change, Concessionaire shall make the change requested within twenty-four (24) hours of receipt thereof. The Chief Administrative Officer may also request Concessionaire to remove a particular type of merchandise from any or all vending machines installed under this agreement. Upon receipt of notice requesting such removal, concessionaire shall remove the objectionable items within twenty-four (24) hours of receipt thereof.

14. **COLLECTION OF MONEY**

14.01 Concessionaire shall provide for the collection of all monies deposited in the vending machines installed pursuant to this agreement. Should the Auditor-Controller or the Chief Administrative Officer desire to verify the count of all monies collected from a vending machine at the time of collection therefrom, Concessionaire shall cooperate therewith.

15. **RISK OF LOSS**

15.01 Concessionaire agrees to assume the risk of loss or damage to all vending machines installed pursuant to this agreement and the merchandise and money located therein from all caused other than the negligent acts or omissions of County employees.

16. **BONDS**

16.01 During any period of construction hereby required or otherwise authorized, Concessionaire shall provide a performance bond in an amount of not less than 100 percent (100%) of the cost for the construction to be performed as evidenced by construction contracts surety authorized to conduct business as a surety in the state of California and acceptable to the Administrative Office Risk Management. The condition of the bond shall be such that if Concessionaire shall complete the required construction specified herein in accordance with approved plans and specifications and received permanent certificate of occupancy for the building, then surety shall no longer be bound thereon. Said bond shall be maintained in full force and effect by Concessionaire for a period of twelve (12) months after said works of improvement have been acceptable by the Chief Administrative Officer.



16.02 During any period of construction hereby required or otherwise authorized, Concessionaire shall provide a payment bond in an amount of not less than 100 percent (100%) or the costs for the construction to be performed as evidenced by construction contracts for all required work, payable to the County of Los Angeles and executed by a corporate surety authorized to conduct business as a surety in the State of California and acceptable to the Chief Administrative Officer. The payment bond shall insure to the benefit of all claimants as said term is presently defined by Section 3085 of the California Civic Code, or may hereafter be amended, so as to give such claimants a right of action to recover thereon in any suit brought to foreclose the liens provided for in this Title 15 of Part 4, of Division 3 of the California Civil Code or in a separate suit brought upon the bond. The condition of the bond shall be such that if Concessionaire shall well and truly pay, or cause to be paid, all claims for labor, materials, appliances, teams or power, or either or all, performed, furnished, or constructed in connection with said works or improvements, then surety shall no longer be bound thereon. Said bond shall be maintained in full force and effect until all claims for labor, materials, appliances, teams, or power have been paid, as evidenced by release or mechanic's liens by all claimants.

16.03 The Chief Administrative Officer may accept in lieu of bonds heretofore described, the performance and payment bonds of corporations duly authorized to issue surety bonds by the State, naming as principal a licensed contractor employed by Concessionaire to contract works of improvement on the concession premises, provided each bond is in an amount equal to the percentage herein above, provided, names County as an additional obligee, contains terms and conditions substantially similar to the requirements heretofore specified; and is satisfactory to the Chief Administrative Officer as to sufficiency and liability of sureties names thereon.

16.04 Concessionaire shall have the option to deposit with the County, cash or United States Government securities in all respects satisfactory to the Chief Administrative Officer in lieu of the surety obligations herein required. Said cash or securities shall be deemed deposited with County to secure full and satisfactory securities performance of the principal obligations heretofore described for which surety is required, and shall be released upon satisfactory performance thereof, as evidenced by certification of completion by the Chief Administrative Officer and release of mechanic's liens by all claimants. In lieu thereof, Concessionaire may deposit the required amount in a bank(s) whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.). Or a saving and loan whose deposits are insured under Title 4 of the National Housing Act (12 U.S.C. 1724 et seq.), provided the financial institution (s) in which the deposit is made will secure the amount of a deposit in excess of the insurable limit by its pledge of government securities and the account is made payable to County on demand and the certificate of deposit unless Concessionaire is in default of the required construction of the works of improvement and/or payment for labor,

materials, appliances, teams, or power performed, furnished or contributed to the works of improvement in which event the principal and interest shall be payable on demand to County for expenditure on completion of the works of improvement and payment of any mechanic's claims and/or liens.

17. **HOLD HARMLESS AND INDEMNIFICATION**

17.01 Concessionaire agrees to indemnify, defend, and save harmless County, its agents, officers, and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, arising from or connected with the use of the concession premises and/or the operations or services under this agreement by concessionaire and the agents, servants and employees thereof, including but not limited to, damaged caused by negligence, creation or maintenance of a dangerous condition of property, breach of express or implied warranty of product, defectiveness of product, or intentional infliction of harm; nonpayment for labor, materials, appliances, or power, performed on, or furnished or contributed to the concession premises; infringement of a patent or copyright or disclosure of a trade secret; violation of state and federal antitrust laws; and violation of federal and state civil rights laws.

17.02 This promise of indemnity shall extent to all the covered liability, expenses, and claims notwithstanding that the act, omission, or condition giving rise thereto is proximately caused by the active or passive negligence of County relating to the use of the concession premises, operations and services, an act or omission relating to the enforcement of this agreement, or a dangerous or defective condition of the concession premises. Concessionaire's duty to indemnity County shall survive the expiration or other termination of this agreement.

18. **INSURANCE**

18.01 Without limiting Concessionaire's indemnification of County, Concessionaire and during the term of this agreement, the Concessionaire shall provide and maintain, and shall require all of its sub-contractors to maintain, the following programs of insurance specified in this agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County, and such coverage shall provided and maintained at Contractor's own expense.

A. **Evidence of Insurance:** Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to the Chief Administrative Office, 222 South Hill Street, 3<sup>rd</sup> Floor, Los Angeles, California 90012 prior to commencing services under this agreement. Such certificates or other evidence shall:



- (1) Specifically identify this agreement.
- (2) Clearly evidence all coverages required in this agreement.
- (3) Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
- (4) Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this agreement.
- (5) Identify any deductibles or self-insured retentions for County's approval. The County retains the right to require Concessionaire reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or require Concessionaire to provide a bond guaranteeing payment of all payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

B. **Insurer Financial Ratings:** Insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating or not less than A:VII, unless otherwise approved by County.

C. **Failure to Maintain Coverage:** Failure by Concessionaire to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of the contract upon which County may immediately terminate or suspend this agreement. County, at its sole option, may obtain damages from Contractor resulting from said breach. Alternatively, County, may purchase such required insurance coverage, and without further notice to Concessionaire, County may deduct from sums due to Concessionaire any premium costs advanced by County for such insurance.

D. **Notification of Incidents, Claims or Suits:** Concessionaire shall report to County:

- (1) any accident or incident relating to services performed under this agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Concessionaire and/or County. Such report shall be made in writing within 24 hours of occurrence.
- (2) any third party claim or lawsuit filed against Concessionaire arising from or

- related to services performed by Concessionaire under this agreement.
- (3) any injury to a Concessionaire's employee which occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County contract manager.
  - (4) any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Concessionaire under the terms of this agreement.

E. **Compensation for County Costs:** In the event Concessionaire fails to comply with any of the indemnification or insurance requirements of this agreement, and such failure to comply results in any costs to the County, Concessionaire shall pay full compensation for all costs incurred by County.

F. **Insurance Coverage Requirements for Sub-contractors:** Concessionaire shall ensure any and all sub-contractors performing services under this agreement meet the insurance requirements of this agreement by either:

- (1) Concessionaire providing evidence of insurance covering the activities of sub-contractors, or
- (2) Concessionaire providing evidence submitted by sub-contractors maintain the required insurance coverage. County retains the right to obtain copies of evidence of sub-contractor insurance coverage at any time.

#### 18.02 **Insurance Coverage Requirements:**

A. **General Liability** insurance (written on ISO policy form CG 00 01 or its equivalent) with limits or not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

B. **Automobile Liability** insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

C. **Workers' Compensation and Employers' Liability:** insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Concessionaire is responsible. If Concessionaire's employees will be engaged in maritime

employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Concessionaire is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease-policy limit	\$1 million
Disease-each employee:	\$1 million

- D. **Professional Liability:** insurance covering liability arising from any error, omission, negligent or wrongful act of the Concessionaire, its officers or employees with limits of not less than \$1 million per occurrence and \$3 million aggregate. The coverage also shall provide an extended two year reporting period commencing upon termination or cancellation of this agreement.
- E. **Property Coverage:** Such insurance shall be endorsed naming the County of Los Angeles as loss payee, provide deductibles of no greater than five percent (5%) of the property value, and shall include:
- Personal Property: Automobiles and Mobile Equipment: Special form ("all risk") coverage for the actual cash value of County-owned or leased property.
- Real Property and All Other Personal Property: Special form ("all risk") coverage for the full replacement value of County-owned or leased property.
- F. **Basic Health Insurance:** A program providing a basic health insurance program for full-time employees providing service under this agreement. Full-time employees are those who work a minimum of 35 hours a week for a period of 50 weeks.

## 19. **TAXES AND ASSESSMENTS**

19.01 The property herein shall be subject to real property taxation and assessment thereon, and in the event thereof, Concessionaire shall pay before delinquency all lawful

taxes, assessments, fees or charges which, at any time, may be levied by the County, State, or City in any other tax or assessment-levying body upon the concession premises and any improvements located thereon.

19.02 Concessionaire shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment it owns or uses in the premises.

## 20. **TRANSFERS**

20.01 In entering into this agreement, County has specifically bargained for the provision of services and other consideration due it by the named Concessionaire. Accordingly, no transfer of this concession agreement, or any part thereof, is allowed. Any transfer of this agreement, whether by sale, assignment, sublease or otherwise, is absolutely prohibited. In the event that Concessionaire attempts to make such a prohibited transfer, the attempted transfer shall be void and of no effect. Furthermore, County may, at its sole option, treat the attempted transfer as a material breach of this agreement and terminate this agreement.

20.02 A transfer under this section shall include a change in the beneficial ownership of Concessionaire (other than a transfer to a family trust) of more than 50 percent (50%).

20.03 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.

20.04 The concession shall not be transferable by testamentary disposition of the state laws of interstate succession, as the rights, privileges, and use conferred by this agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter X or XI of the Bankruptcy Act.

20.05 Shareholders or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is affected in such a way as to give majority control of Concessionaire to any persons, corporations, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this agreement, approval thereof shall be required. Consent to any such transfer shall only be

refused if the Chief Administrative Officer finds that the transferee is lacking in experience or financial ability to conduct the concession.

20.06 The prohibition herein contained shall not be applicable with respect to transfers of this agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Chief Administrative Officer.

## 21. **NONDISCRIMINATION**

21.01 Concessionaire certifies and agrees that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, political affiliation, marital status, age, handicap, national origin, or sex and in compliance with all Federal and State laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964, the Unruh Civil Rights Act, the Cartwright Act, the Americans with Disabilities Act of 1991 and the State Fair Employment Practices Act.

21.02 Concessionaire certifies and agrees that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, religion, ancestry, national origin or sex.

21.03 All employment records shall be open for inspection and reinspection at any reasonable time during the term of this agreement for the purpose of verifying the practice of non-discrimination by Concessionaire in the areas heretofore described.

21.04 The sum of TWO THOUSAND DOLLARS (\$2,000.00) is hereby agreed upon as the amount of damages that will be sustained by County for breach of the promises on nondiscrimination herein contained. Said amount has been set by the parties hereto in recognition of the difficulty in fixing actual damages arising from a breach thereof.

## 22. **CANCELLATION**

22.01 Upon the occurrence of any one or more of the events of default hereinafter described, this agreement, shall be subject to cancellation. As a condition precedent thereto, the Chief Administrative Officer shall give Concessionaire ten (10) days notice by registered or certified mail of the date set for cancellation thereof the ground therefore; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made thereafter.

22.02 Upon cancellation, County shall have the right to take possession of the concession premises, including all improvements, equipment, and inventory located thereon,

and use for the purpose of satisfying or mitigating all damages arising from a breach of this agreement.

22.03 Action by County to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this agreement.

22.04 Any trustee, beneficiary, mortgage or lender under a hypothecation or mortgage previously approved by the Chief Administrative Officer shall have the right at any time during the term of this agreement to undertake any and all action that may be required in order to prevent a cancellation of this agreement and a forfeiture of the concession. Accordingly, the Chief Administrative Officer shall send a copy of any intended cancellation of this agreement to any of the aforementioned Lenders whose security would be affected thereby provided that such Lenders shall have previously registered with the Chief Administrative Officer by written notice specifying the name and address of said Lender; and upon request thereof for postponement, extend the date set therefor by such time as the Chief Administrative Officer finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new Concessionaire under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the Chief Administrative Officer.

## **23. EVENTS OF DEFAULT**

23.01 The abandonment, vacation or discontinuance of operations on the concession premises for more than forty-eight (48) consecutive hours.

23.02 The failure of Concessionaire's to punctually to pay or make the payments required when due, where the delinquency continues beyond ten (10) days following written notice for payment thereof.

23.03 The failure of Concessionaire to operate in the manner required by this agreement, where such failure continues for more than ten (10) days after written notice from the Chief Administrative Officer to correct the condition therein specified.

23.04 The failure to maintain the concession premises and the improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary and safe satisfactory condition, where such failure continues for more than ten (10) days after written notice from the Chief Administrative Officer to begin correction of the condition.

23.05 The failure of Concessionaire to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this agreement, where such failure

continues for more than thirty (30) days after written notice from the Chief Administrative Officer for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be reasonably required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time may be waived in the manner and to the extent allowed by the Chief Administrative Officer.

23.06 The filing of a voluntary petition in bankruptcy, the appointment of any receiver of Concessionaire's assets, the making of a general assignment for the benefits of creditors, a petition or answer seeking an arrangement for the reorganization of Concessionaire under any Federal Reorganization Act, including petitions or answers under Chapter XI of the Bankruptcy Act; the occurrence of any act by Concessionaire which to deprive Concessionaire permanently of rights, powers and privileges necessary for the proper conduct and operation of the concession, the levy of any attachment or execution which substantially interferes with attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

23.07 Determination by the Chief Administrative Officer, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination, or having been practiced by Concessionaire in violation of State and/or Federal laws thereon.

23.08 Transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this agreement.

#### 24. **DESTRUCTION OF CONCESSION PREMISES**

24.01 In the event the premises shall be totally or partially destroyed by the fire, earthquake, flood, storms, war, insurrection, riot, public disorder, casualty, County shall either restore the premises or terminate this agreement.

24.02 Should County elect to restore the premises, this agreement shall continue in full force and effect except that the payments to be made by concessionaire shall be abated and/or other relief afforded to the extent that the Chief Administrative Officer may determine the construction interferes with the concession, provided a claim therefor is filed with the Chief Administrative Officer within one hundred (100) days of commencement of construction.

24.03 Concessionaire agrees to cooperate with County in the restoration of the concession premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities . Concessionaire further agrees to cooperate in the determination of the abatement and other relief to be provided by furnishings all information requested related to the



concession, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

24.04 The aforesaid provisions of this section shall also be applicable to a total or partial destruction of the facilities by the aforementioned causes, except that the relief to be provided shall be based upon the extent the Chief Administrative Officer may determine that the reduction in the public's use of the due to the partial of total closure thereof has affected the concession.

24.05 Concessionaire agrees to accept the remedy heretofore provided in the event of a destruction of the premises, and hereby waives any or all additional rights and remedies for relief or compensation that are presently available or may hereinafter be made available under the laws and statues of this state.

## **25. CONSTRUCTION BY COUNTY AFFECTING CONCESSION PREMISES**

25.01 In the event County shall construct or cause to be constructed a new facility for Concession, this agreement shall continue in full force and effect, except that the payment to be made by Concessionaire shall be abated and other relief afforded to the extent that the Chief Administrative Officer may reasonably and in good faith determine after Concessionaire has an opportunity to be heard and to present evidence the construction has in anyway interfere, or will interfere with Concessionaire's operation of its concession, and or Concessionaire's revenue from the concession provided a claim therefore is filed with the Chief Administrative Officer within one hundred (100) days of Concessionaire's commencement of construction.

25.02 Concessionaire agrees to cooperate with County in the event the construction affects the concession premises by vacating and removing therefrom at County's cost all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Concessionaire further agrees to cooperate in the determination of the abatement or other relief to be provided by furnishing all information requested relative to the concession and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

25.03 The aforementioned provisions of this section shall also be applicable in the event of performance of work on the cafeteria requires a partial or total closure thereof, except that the abatement or other relief to be provided shall be based upon the extent the Chief Administrative Officer may determine that the reduction in the public's use of the facility due to the partial or total closure thereof, has affected the concession.



25.04 Concessionaire agrees to accept the remedy heretofore provided in the event of construction upon the concession premises and hereby waives any or all additional rights and remedies for relief or compensation that are presently available or may be made available hereinafter under the laws and statutes of this state.

26. **WAIVER**

26.01 Any waiver by County or Concessionaire of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of County to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements or estopping County from enforcing the full provisions thereof.

26.02 No delay, failure, or omission of County to re-enter the concession premises or to exercise any rights, power, privilege or option, arising from any default, nor any subsequent acceptance of payment then or thereafter shall impair any such right, power, privilege or option, or acquiescence in such default or as a relinquishment of any right.

26.03 No notice to Concessionaire shall be required to restore or revive "time of the essence" after the waiver by County of any default.

26.04 No option, right, power, remedy or privilege of County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given County this agreement shall be cumulative.

27. **RIGHT OF ENTRY**

27.01 Any officer or employee of the County may enter upon the concession premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions thereof, or for any other purpose incidental to the rights of the County.

27.02 In the event of an abandonment, vacation or discontinuance of concession operations for a period in excess of forty-eight (48) hours, Concessionaire hereby

irrevocably appoints the County as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the concession premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such

property in storage for the account of and at the expense of Concessionaire; (3) sublease or license the premises; and (4) after payment of all expenses of such subleasing or licensing apply all payment realized therefrom to the satisfaction or mitigation of all damages arising from Concessionaire's breach of this agreement. Entry by the offices and employees of the County upon the concession premises for the purpose or exercising the authority conferred hereon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this concession agreement.

28. **SURRENDER**

28.01 Upon expiration of the term hereof, or termination thereof as herein provided, Concessionaire shall peaceably vacate the premises and any and all improvements located thereon and deliver up the same to County in a reasonably good condition, ordinary wear and tear excepted.

29. **TERMINATION FOR IMPROPER CONSIDERATION**

29.01 County may, by written notice to Concessionaire, immediately terminate the right of Concessionaire to proceed under this agreement if it is found that consideration, in any form, was offered or given by Concessionaire, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing the agreement or securing favorable treatment with respect to the award, amendment or extension of the agreement or the making of any determination with respect to the Concessionaire's performance pursuant to the agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Concessionaire as it could pursue in the event of default by the Concessionaire.

29.02 Concessionaire shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6881.

29.03 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

30. **LOBBYIST ORDINANCE**

30.01 Proposer and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by proposer, shall fully comply with the

County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of proposer or any County lobbyist or County lobbying firm retained by Proposer to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this agreement upon which County may immediately terminate or suspend this agreement.

31. **REFERRAL OF CURRENT AND FORMER COUNTY EMPLOYEES FOR EMPLOYMENT WITH CONCESSIONAIRE**

31.01 Concessionaire shall accept referrals from County Human Resources of qualified and current former County employees for consideration of employment with Concessionaire. Such consideration for employment shall be limited to the vacancies in Concessionaire's staff needed to perform services under this agreement. If such referrals results in offers of employment such offers shall be made once, shall be in writing, shall indicate whether the position is full-time or part-time, and shall be valid for a period of ten (10) calendar days from the date the offer is made, unless such period is extended at Concessionaire's option. Such offers shall be for vacancies which occur in this agreement. Employment offers to such employees shall be under at least the same conditions and rates of compensation which apply to the other persons who are employed or may be employed Concessionaire. Concessionaire shall maintain records of such offers to include a description of the position and duties, the rate of pay and fringe benefits, and whether the offer was accepted, rejected, or not responded to within the allocated time period. Such employees who are employed by Concessionaire under this paragraph shall not be discharged during the term of this agreement except for cause. Concessionaire shall notify in writing Resources staff and/or other County staff which may be designated in writing by the Chief Administrative Officer.

32. **COUNTY'S QUALITY ASSURANCE PLAN**

32.01 The Chief Administrative Officer will evaluate Concessionaire's performance under this agreement on an annual basis. Such evaluation will include assessing Concessionaire's compliance with all contract terms and performance standards. Concessionaire deficiencies which County determines are severe or continuing and that may place performance of the agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and Concessionaire. If improvement does not occur consistent with the corrective action measures, County may terminate this agreement, or impose other penalties as specified in this agreement.

33. **CONCESSIONAIRE'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

33.01 Concessionaire acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through County contracts are in compliance with their court-ordered child, family, and espousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

33.02 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Concessionaire's duty under this agreement to comply with all applicable provisions of law, Concessionaire warrants that it is in compliance and shall, during the term of this agreement, maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42USC Section 653a) and California Unemployment Insurance Code Section 1088.55, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Espousal Support, pursuant to Code of Civil Procedure Section 706.31 and Family Code Section 5246(b).

33.03 Within thirty (30) calendar days of renewal or term extension amendment to this agreement of at least one year, Concessionaire shall submit to County's District Attorney (DA) a completed Principal Owner Information Form (POI Form), incorporated herein by reference, along with certifications in accordance with the provisions of section 2.200.060 of the County Code, that : (1) the POI Form has been appropriately completed and provided to the DA with respect to Concessionaire's Principal Owners; (2) Concessionaire has fully complied with all applicable State Notices of Assignment and will continue to maintain compliance. Such certification shall be submitted on the Child Support Compliance Program Certification (CSCPC Certification), also incorporated herein by reference. Failure of concessionaire to submit the CSCPC Certification (which includes certification that the POI Form has been submitted to the DA) to County's DA shall represent a material breach of contract upon which County may immediately suspend or terminate this agreement.

34. **TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

34.01 Failure of Concessionaire to maintain compliance with the requirements set forth in Paragraph 33 (Concessionaire's Warranty of Adherence to County's Child Support Compliance Program) shall constitute a default by Concessionaire under this agreement. Without limiting the rights and remedies available to County under any other provision of this agreement, failure to cure such default within ninety (90) calendar days of written notice by County's DA shall be grounds upon which County's Board of Supervisors may terminate this agreement.

35. **CONCESSIONAIRE'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT**

35.01 Concessionaire acknowledges the County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Concessionaire understands that it is County's policy to encourage all County contractors to voluntarily post County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at contractor's place of business. County's District Attorney will supply contractor with the poster to be used.

36. **INDEPENDENT CONTRACTOR**

36.01 In performing the obligations hereunder, Concessionaire is engaged solely in the capacity of independent contractor, it being expressly understood that no relationship between the contracting parties hereto other than that of independent contractor has been or is intended to be created. This concession agreement does not constitute and the parties hereto do not intend to create thereby a partnership or a joint venture, or a relationship of master and servant or principal and agent as it is mutually understood and agreed that the relationship created thereby and the construction of rights and duties thereunder is to be determined in accordance with the laws relating to owners and occupants of real property.

37. **ENFORCEMENT**

37.01 The Chief Administrative Officer shall be responsible for the enforcement of this agreement on behalf of County and shall be assisted therein by those officers and employees of County having duties in connection with the administration thereof.

37.02 In the event County commences legal proceedings for the endorsement of this agreement or recover of the premises used herein, Concessionaire does hereby agree to pay any sum which may be awarded to County by the Court for attorney's fees and costs incurred in the action brought thereon.

38. **GRATUITIES**

38.01 It is improper for any County officer, employee or agent to solicit consideration, in any form, from a proposer with the implication, suggestion or statement that the proposer's provision of the consideration may secure more favorable treatment for the proposer in the award of the contract or that the proposer's failure to provide such consideration may negatively affect the County's consideration of the proposer's submission. A proposer shall not offer or give, either directly or through an intermediary, consideration, in any form, to a County officer, employee or agent for the purpose of securing treatment with respect to the award of the contract. The term proposer shall include Concessionaire.

38.02 A proposer shall immediately report any attempt by a County officer, employee or

agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861. Failure to report such a solicitation may result in the proposer's submission being eliminated from consideration.

38.03 Among other items such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts..

39. **CONCESSIONAIRE DEBARMENT**

39.01 On January 11, 2000, the Los Angeles County Board of Supervisors adopted an ordinance for Determinations of Contractor Non-Responsibility and Contractor Debarment (Ordinance), Los Angeles County Code Chapter 2.202, which is applicable to all County contracts except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.

- A. A responsible Concessionaire is a Concessionaire who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible concessionaires.
- B. The Concessionaire is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the county acquires information concerning the performance of the Concessionaire on this or other contracts which indicates that the Concessionaire is not responsible, the County, may, in addition to other remedies provided in the contract, debar the Concessionaire from bidding on County contracts for a specified period of time not to exceed 3 years, and terminate any or all existing contracts the Concessionaire may have with the County.
- C. The County may debar a Concessionaire if the Board of Supervisors finds, in its discretion, that the Concessionaire has done any of the following: (1) violated any term of a contract with the County, (2) committed any act or omission which negatively reflects on the Concessionaire's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.
- D. If there is evidence that the Concessionaire may be subject to debarment, the Department will notify the Concessionaire in writing of the evidence

which is the basis for the proposed debarment and will advise the Concessionaire of the scheduled date for a debarment hearing before the Contractor Hearing Board.

- E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Concessionaire and/or the Concessionaire's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the Concessionaire should be debarred; and, if so, the appropriate length of time of the debarment. If the Concessionaire fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Concessionaire may be deemed to have waived all rights of appeal.

#### 40. **INTERPRETATION**

40.01 This agreement shall be interpreted according to the rules which govern the interpretation of contracts, as prescribed in Part 2 of Division 3 of the California Civil Code, commencing with Section 1635.

40.02 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provisions thereof.

40.03 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

**Auditor-Controller** - The County Auditor-Controller or an authorized representative thereof.

**Beverage** - Any liquid prepared by flavoring, heating and/or admixing in advance of consumption thereof, other than alcoholic beverages as defined in the State Alcoholic Beverages Control Act.

**Chief Administrative Officer** - The Chief Administrative Officer of the County of Los Angeles or an authorized representative thereof.

**Gross Receipts** - All money, cash, receipts, assets, property or other things of value, including, but not limited to, gross charges, sales, rental, fees and commissions made or earned by Concessionaire, and/or assignees, subleases, or permittees thereof, whether performed in whole or in part, on the concession premises, including, but not limited to, rental,



the rendering or supplying of services and the sale of goods, wares or merchandise. Gross receipts shall not include the following:

- a. Sales and excise taxes applicable thereto, required to be collected by Concessionaire and/or permittees thereof.
- b. Federal, state, municipal or other taxes collected from the consumers, regardless or whether the amount thereof as stated to the consumer as a separate charge, provided the amount of such taxes shall be shown on the accounting records for the concession as hereinafter required.
- c. Receipts from the sale or trade-in value of any equipment used on the concession premises and owned by Concessionaire.
- d. Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to the shippers, suppliers or manufactures.
- e. Receipts with respect to any sale where the subject of such sale or some part thereof, is thereafter returned by the purchaser and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

**Net Profit** - Net profit shall be computed by debiting from gross receipts all expenses paid by Concessionaire which are directly related to the vending machine operation for said contract year. These expenses consist of salaries and benefits for employees, including an on-site manager, performing services and labor on the premises, food costs, costs of expendable items such as eating and cooking utensils, costs of utilities, waste disposal, maintenance and repair costs, depreciation on equipment owned by Concessionaire (useful life shall be the period of this contract) and the costs of insurance, taxes, licenses and fees prorated on the basis of a contract year. Said direct expenses shall not include administrative expenses, such as management salaries, accounting, auditing, clerical and other services generally classified as overhead. In the event there is any conflict or disagreement as to what constitutes a direct expense, the opinion of the County's Auditor-Controller shall be decisive in the matter.

**County** - Shall mean the County of Los Angeles.

**State** - The State of California.

**"Region 2"**: That area located south of the Santa Monica Freeway (10), and east of the Santa Ana Freeway (5), except buildings or areas therein designated for use by persons



other than Concessionaire in connection with the grant of a concession for airports; employee cafeterias or park purposes, beaches and harbors areas, or in connection with the Business Enterprise Program for the Blind of Southern California, Department of Rehabilitation, where the term provided therefor is concurrent in whole or in part with the term of this agreement. Also excepting therefor are Sheriff's inmate areas, but not Sheriff stations and offices.

**Vending Machines** - Equipment that dispenses merchandise upon insertion of coins or use of debit cards, as well as equipment such as coffee brewers, furnished without charge for use in offices on condition that ingredients, accessories and supplies required in the preparation of hot beverages with sale equipment shall be purchase exclusively from Concessionaire and that payment therefor shall be made by the consumers thereof without any derivative liability for said debts on the part of employers.

#### 41. **NOTICES**

41.01 Any notices required to be given under the terms of this concession agreement or any law applicable thereto may be placed in a sealed envelope, with posted paid, addressed to the person on whom it is to be served, and deposited in a post office mail box, sub-post office, substation or mail chute, or other like facility regularly maintained by the United State Postal Service. The address to be used for any notice served by mail upon Concessionaire shall be:

Compass Group - North American Division  
17755 East Valley Boulevard  
City of Industry, CA 91744  
Mr. Kevin Stroud  
Phone: (626) 964-3607

or such other place as any hereinafter be designed in writing to the Chief Administrative Officer by Concessionaire. Any notice served by mail upon County shall be addressed to:

Chief Administrative Office, Real Estate Division  
222 South Hill Street, 3<sup>rd</sup> Floor  
Los Angeles, CA 90012

or such other place as may hereinafter be designated in writing to Concessionaire by the Chief Administrative Officer. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

#### 42. **ENTIRE AGREEMENT**

42.01 This document and the exhibits attached hereto constitute the entire agreement

between County and Concessionaire for the vending machine concession in Region 2. All other agreements, promises and representations with respect thereto, other than those contained herein are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises and covenants relating to the concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this agreement shall not render the other provisions thereof unenforceable, invalid or illegal.

42.02 This document may be modified only upon written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of County until approved by the Chief Administrative Officer.

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**IN WITNESS WHEREOF**, Concessionaire has executed this agreement or caused it to be fully executed and County of Los Angeles, by order of its Board of Supervisors, has caused this agreement to be executed on its behalf by the Mayor of said Board and attested by the Executive Officer, Board of Supervisors thereof, the day and year first above written.

**COUNTY OF LOS ANGELES**

BY  
Chairman, County of Los Angeles

ATTEST:

**COMPASS GROUP, NORTH-AMERICAN  
DIVISION, DBA: CANTEEN VENDING  
SERVICES**

VIOLET VARONA-LUKENS  
Executive Officer, Board of Supervisors By \_\_\_\_\_

By \_\_\_\_\_  
Deputy

By

APPROVED AS TO FORM

LLOYD W. PELLMAN  
County Counsel

BY  
Deputy

CB:JDS:kb

canteencorpvendmachines)100201

## LIST OF VENDING MACHINES IN REGION 2

DEPARTMENT/ADDRESS	VENDING MACHINES
1.     Rehabilitation Center 1975 Long Beach Blvd. Long Beach	1 snack 1 soda
2.     Childrens' Services 5757 W. Century Blvd., 3 <sup>rd</sup> Floor Los Angeles	1 snack 1 soda
3.     Department of Public Social Services 3835 S. Western Avenue Los Angeles	1 snack 1 soda
4.     Airport Branch Court 11701 S. La Cienega Blvd. Los Angeles	1 snack 1 soda
5.     Inglewood Municipal Court 110 E. Regent Street Inglewood	1 snack 1 hot beverage
6.     Childrens' Services 11539 Hawthorne Blvd. Hawthorne	1 snack 1 soda
7.     Department of Beaches & Harbors 13937 W. Fiji Way Marina Del Rey	1 snack 1 soda
8.     Santa Monica Court 1725 Main Street, 1 <sup>st</sup> Floor Santa Monica	1 snack 1 soda
9.     Santa Monica Court 1725 Main Street, 3 <sup>rd</sup> Floor Santa Monica	1 snack 1 soda 1 hot beverage

**DEPARTMENT/ADDRESS****VENDING MACHINES**

- |     |   |                                     |
|-----|---|-------------------------------------|
| 10. | Internal Services Department<br>11236 Playa Court Place<br>Culver City                | 1 soda                              |
| 11. | Culver Municipal Court<br>4130 Overland Street, Lobby<br>Culver City                  | 1 snack<br>1 soda                   |
| 12. | Childrens' Services<br>5460 Bandini Drive<br>City of Commerce                         | 1 soda                              |
| 13. | County Courthouse<br>110 N. Hill Street, 3 <sup>rd</sup> Floor<br>Los Angeles         | 1 snack<br>1 soda                   |
| 14. | Bellflower Courthouse<br>10025 Flower Street<br>Bellflower                            | 1 snack<br>1 soda                   |
| 15. | Patriotic Hall<br>1816 Figueroa Street<br>Los Angeles                                 | 1 soda                              |
| 16. | Rancho Los Amigos Hospital<br>7601 E. Imperial Highway<br>Downey                      | 1 snack<br>1 soda                   |
| 17. | South Gate Courthouse<br>8640 California Avenue<br>South Gate                         | 1 snack<br>1 soda                   |
| 18. | Rancho Los Amigos Hospital<br>7601 E. Imperial Highway, 1 <sup>st</sup> JPL<br>Downey | 1 snack<br>1 soda<br>1 hot beverage |
| 19. | Rancho Los Amigos Hospital<br>7601 E. Imperial Highway, 2 <sup>nd</sup> JPL<br>Downey | 1 snack<br>1 soda                   |

**DEPARTMENT/ADDRESS****VENDING MACHINES**

- |     |  |                           |
|-----|--|---------------------------|
| 20. | Rancho Los Amigos Hospital<br>7601 E. Imperial Highway, 3 <sup>rd</sup> JPL<br>Downey  | 1 snack<br>1 soda         |
| 21. | Rancho Los Amigos Hospital<br>7601 E. Imperial Highway, Main<br>Downey                 | 1 snack<br>1 soda         |
| 22. | Public Library<br>12700 Grivellea Street<br>Hawthorne                                  | 1 soda                    |
| 23. | County Courthouse<br>6548 Miles Avenue<br>Huntington Park                              | 1 snack<br>1 soda         |
| 24. | Department of Public Social Services<br>8130 S. Atlantic Avenue<br>Cudahy              | 1 snack<br>1 soda         |
| 25. | District Attorney<br>5770 S. Eastern Avenue<br>City of Commerce                        | 1 snack<br>1 hot beverage |
| 26. | District Attorney<br>5770 S. Eastern Avenue, 2 <sup>nd</sup> Floor<br>City of Commerce | 1 snack<br>1 soda         |
| 27. | District Attorney<br>5770 S. Eastern Avenue, 4 <sup>th</sup> Floor<br>City of Commerce | 1 snack<br>1 soda         |
| 28. | Juvenile Court<br>7625 S. Central Avenue<br>Los Angeles                                | 1 snack<br>1 soda         |
| 29. | Department of Public Social Services<br>2855 E. Olympic Blvd.<br>Los Angeles           | 1 snack<br>1 soda         |

**DEPARTMENT/ADDRESS****VENDING MACHINES**

- |     |  |                                     |
|-----|--|-------------------------------------|
| 30. | District Attorney<br>621 Hawaii Street<br>El Segundo                             | 1 snack<br>1 soda                   |
| 31. | Data Processing Center<br>9150 Imperial Highway, 2 <sup>nd</sup> Floor<br>Downey | 1 soda                              |
| 32. | Department of Public Social Services<br>1326 W. Imperial Highway<br>Los Angeles  | 1 snack<br>1 soda                   |
| 33. | Department of Childrens' Services<br>5835 S. Eastern Avenue<br>Los Angeles       | 1 snack<br>1 soda                   |
| 34. | Public Library<br>150 E. El Segundo<br>Los Angeles                               | 1 soda                              |
| 35. | Data Processing Center<br>9150 E. Imperial Highway, K-111<br>Downey              | 1 snack<br>1 soda<br>1 hot beverage |
| 36. | Data Processing Center<br>9150 E. Imperial Highway, Rm. 124<br>Downey            | 1 snack<br>1 soda                   |
| 37. | Data Processing Center<br>9150 E. Imperial Highway, Rm. 16<br>Downey             | 1 snack<br>1 soda                   |
| 38. | Assessor<br>24330 Narbonne Avenue<br>Lomita                                      | 1 snack<br>1 soda                   |
| 39. | Department of Public Social Services<br>2959 Victoria Street<br>Rancho Dominguez | 1 snack<br>1 soda                   |



**DEPARTMENT/ADDRESS****VENDING MACHINES**

- |     |  |                                     |
|-----|--|-------------------------------------|
| 40. | Childrens' Services<br>3060 Watson Plaza<br>Lakewood                               | 1 snack<br>1 soda                   |
| 41. | Traffic Courthouse<br>1945 South Hill<br>Los Angeles                               | 1 snack<br>1 soda                   |
| 42. | District Attorney<br>20221 Hamilton Avenue<br>Torrance                             | 1 snack<br>1 soda                   |
| 43. | San Pedro Courthouse<br>505 Center Street<br>San Pedro                             | 1 snack<br>1 soda                   |
| 44. | Public Library<br>7400 E. Imperial Highway<br>Downey                               | 1 snack<br>1 soda                   |
| 45. | Department of Public Social Services<br>17600 Santa Fe Avenue<br>Rancho Dominguez  | 1 soda                              |
| 46. | County Courthouse<br>11701 S. Alameda<br>Lynwood                                   | 1 snack<br>1 soda<br>1 hot beverage |
| 47. | MLK-Drew Medical Center<br>12021 Wilmington Avenue<br>Los Angeles (Personnel Room) | 1 snack<br>1 soda                   |
| 48. | MLK-Drew Medical Center<br>12021 Wilmington Avenue<br>Los Angeles (Emergency)      | 1 snack<br>1 soda<br>1 hot beverage |
| 49. | MLK-Drew Medical Center<br>12021 Wilmington Ave<br>Los Angeles (Fred Watkins Bldg) | 1 soda                              |

**DEPARTMENT/ADDRESS****VENDING MACHINES**

50. MLK-Drew Medical Center  
12021 Wilmington Ave., 1<sup>st</sup> Floor  
Los Angeles (Fred Watkins Bldg)

1 soda

51. MLK-Drew Medical Center  
12021 Wilmington Ave., 2<sup>nd</sup> Floor  
Los Angeles (Fred Watkins Bldg)

1 soda

52. MLK-Drew Medical Center  
12021 Wilmington Ave., Intern  
Los Angeles

1 snack  
1 soda

53. MLK-Drew Medical Center  
12021 Wilmington Ave., Mental  
Los Angeles

1 snack

54. MLK-Drew Medical Center  
12021 Wilmington Ave  
Los Angeles

1 snack

55. Animal Control  
151 E. Carson Street  
Carson

1 snack  
1 soda

**Total**

**100 vending machines    \$407,492.00**